United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-1827

United States Court of Appeals

For the Second Circuit.

THE UNITED STATES

Appellees,

vs.

PEDRO MORELL and RAMON BRUZON

Appellants.

On appeal from the United States District Court
For The Eastern District of New York

JOINT APPENDIX

GEORGE L. SANTANGELO
Attorney for Appellant, Bruzon
Office & P.O. Address
253 Broadway
New York, N.Y. 10007
212-267-4488

SLOTNICK & NARRAL
Attorney for Appellant, Morell
15 Park Row
New York, N.Y. 10018
BE 3-5390

NOV 11 1974

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FILED

CRIMINAL DOCKET 72CR 644

CONSTANTINO, J.

~~TRAUB~~, J. ROSLING

TITLE OF CASE	ATTORNEYS
THE UNITED STATES vs. PEDRO MORELL and RAMON BRUZON	For U. S.: CLOSED For Defendant BURZON: George Santangelo 253 Broadway, NYC. 267-4488

Possess with intent to distribute cocaine.

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISB
Fine,		5-17-74	Notice of Appeal & Motion	5 -	
Clerk,		5-20-74	Bail to Treas		5
Marshal,		5-17-74	Notice of Appeal	5 -	
Attorney,		5-20-74	Bail to Treas		5
Commissioner's Court,					
Witnesses,					

JUN 17 1974

SECOND CIRCUIT

DATE	PROCEEDINGS
6-1-72	Before WEINSTEIN, J. - Indictment filed.
6-16-72	Before ROSLING, J. - Deft MORELL & BRUSON & counsels present. Defts. arraigned and each enters a plea of not guilty. 30 days for motions. Court fixed bail at $25,000.00 for each deft., cash or surety. Bail be posted by 5 P.M. General calendar.
6-19-72	By ROSLING, J. - Order releasing bail filed.
6-29-72	By Rosling J - Order releasing bail filed.(Bruzon)
7-13-72	Notice of motion filed for dismissal, inspection, a bill of particula and suppression.
7-13-72	Memorandum of law in support filed.
8-24-72	Mag. File 72 M 1302 and 72 M 1303 inserted into CR File.
9-15-72	Before ROSLING.J.-Case called-Deft not present-C as adjd to 9-20-72 @

72CR 644

DATE	PROCEEDINGS
9-29-72	Before Rosling J - Case called on defts motion for dismissal , Inspection etc. Motion for dismissal argued - court denied the motion - as to Inspection and Bill of Particulars - consented in part and withdrawn in part.
10-3-72	By ROSLING J- Order filed on defts motions etc. granted and denied as indicated in Order. ; suppression of evidence hearing to be conducted by trial judge immediately before commencement of trial.
10-16-72	Stenographers transcript dated 9-29-72 filed.
11/73	Notice of Readiness for Trial filed.
/5/73	Before TRAVIA,J.- Case called-Defts and counsel Slotnick present-Defts waive speedy trial rights-Case adjd to 1/4/73 to set trial date.
4/74	Before TRAVIA,J. - Case called Defts and counsel present Case adjd to 2/25/74 for trial (both defts)
25-74	Before TRAVIA J - case called - respectfully referred to Judge Costantir for trial.
-27-74	Notice of Appearance filed (BURZON)
-27-74	Before COSTANTINO,J.- Case called- Defts and counsels present- Motion t suppress begun- Both sides rest- Motion to suppress denied- Hearing con cluded
-74	Before TRAVIA J - case called - defts & attys present - Trial ordered and BEGUN - Jurors selected and sworn - Trial contd to 2-29-74
-74	Before TRAVIA J - case called - defts & attys present - Trial contd. Trial contd to 3-4-74.
4-74	Before TRAVIA J - case called - defts & attys present - Trial resumed Newspaper article marked as Ct.Ex.#2 - motions by defts for mistrial Motion granted - Mistrial granted - case adjd to 3-5-74 for Trial.
-74	Before COSTANTINO,J.- Case called- Defts and counsels present- Trial and begun- Jurors selected and sworn- Trial contd to 3-6-74
6-74	Before COSTANTINO J - case called - defts & counsels present - trial contd - Trial contd to 3-7-74.
-74	By Costantino J - Order of Sustenance filed (Lunch)
-74	Before COSTANTINO J - case called - defts & attys present - Trial resu Jury returns at 5:45 PM and renders a verdict of guilty as to cts. 1 & as to both def Sentences adjd without date - Jury polled & discharged - Trial conclud
8-74	Requests to Charge filed (both defts)
-74	Govts Requests to Charge filed.
-74	Stenographers Transcript dated 2-28-74 and 3-1-74 filed
74	Motion to dismiss as to Morell, ret. May 3, 1974.

CR 644

CRIMINAL DOCKET

DATE	PROCEEDINGS
5-3-74	Before COSTANTINO,J.- Case called- Deft's motion for suppression ad to 5-6-74 at 10:00 A.M.(MORELL) - Case adjd to 5-6-74 for sentencin as to both defts
5-6-74	Notice of Motion filed, ret. May 10, 1974, for Judgment of Acquittal or new trial, etc.
5-6-74	Before COSTANTINO,J.- Case called- Deft and counsel present- Motio: suppression and for a new trial argued- decision reserved as to both defts- Sentence adjd to 5-10-74 at 10:00 A.M. as to both defts
5-10-74	Before COSTANTINO J - case called - defts motion for Judgment of Acquittal or a new trial, etc. Motions argued and denied.
5-10-74	Before COSTANTINO J - case called - defts & counsels present - Each deft sentenced to imprisonment for 8 years on count 1 and 5 year special parole term pursuant to 18:4208(a)(2) and 8 years on count 2 to run concurrently with count 1. Bail set at $50,000 as to both defts(surety bond) defts advised of their ri to appeal.
5-10-74	Judgment & Commitment filed - certified copies to Marshal (both defts)
5-14-74	Magistrate's file 74 M 713 inserted into CR file.
5-17-74	Notice of Appeal filed (MORELL)
5-17-74	Notice of Appeal filed (BRUZON)
5-17-74	Docket entries and duplicate of Notice of Appeal mailed to C of A together with Form A on behalf of both defts.
5-20-74	Certified copy of Judgment and Commitment retd and filed- deft deliv: to Federal Detention Headquarters (BRUZON)
6-17-74	Record on appeal certified and handed to Richard Bailey for delivery to the court of appeals

A TRUE COPY ATTEST
DATED 6/17/74
LEWIS ORGEL CLERK
BY DEPUTY CLERK

D. C. 109

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA -against- PEDRO MORELL and RAMON BRUZON, Defendants.	Criminal No. T. 21, U.S.C., §§841(a)(1), 846 T. 18, U.S.C., §2

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 25th day of May 1972, within the Eastern District of New York, the defendant PEDRO MORELL and the defendant RAMON BRUZON, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to distribute a quantity of cocaine hydrochloride, a Schedule II narcotic drug controlled substance in violation of Section 841(a)(1), Title 21, United States Code. (Title 21, United States Code, Section 846).

COUNT TWO

On or about the 25th day of May 1972, within the Eastern District of New York, the defendant PEDRO MORELL and the defendant RAMON BRUZON, did possess, with intent to distribute approximately 3,867 grams (net weight) of cocaine hydrochloride, a Schedule II narcotic

drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

A TRUE BILL:

_____

FOREMAN

_____

UNITED STATES ATTORNEY

NOTICE OF MOTION

(Same Title)

S I R :

PLEASE TAKE NOTICE, that upon the annexed affidavit of RAYMOND F. NARRAL, ESQ., duly sworn to the 12th day of July, 1972, the memorandum of law submitted together herewith, the indictment herein, and upon all of the proceedings heretofore had herein and in futuro, the undersigned will move this Court before The Honorable George Rosling for an order

1. Pursuant to the Rules of Federal Procedure dismissing the indictment due to its vagueness, indefiniteness, illegality and that as a matter of law it does not properly charge the defendants with any offense against the United States of America or the law thereof;

2. Pursuant to Rule 16 of the Federal Rules of Criminal Procedure permitting the defendants to inspect, copy and/or photograph material, which requests therefor are annexed hereto and made a part of the instant notice of motion;

3. Pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, directing the United States

Attorney to serve and file the bill of particulars as to the indictment herein; said requests are annexed hereto and made a part of the instant notice of motion;

4. Pursuant to Rule 41 of the Federal Rules of Criminal Procedure suppressing the evidence seized herein due to the fact that the defendants' Fourth, Fifth and Sixth Amendment rights under the Constitution of the United States of America have been violated; together with such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
July 12, 1972

Yours, etc.,

SLOTNICK & NARRAL
Attorneys for Defendant
15 Park Row
New York, New York 10038

BARRY IVAN SLOTNICK, ESQ.,
of counsel

TO: HONORABLE ROBERT A. MORSE
United States Attorney
Eastern District of New York
Federal Building
Brooklyn, New York

AFFIDAVIT OF RAYMOND F. NARRAL IN SUPPORT

(Same Title)

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

RAYMOND F. NARRAL, being duly sworn, deposes and says:

1. That I am an attorney duly licensed to practice in the State of New York and in the Federal District Court in and for the Eastern District of New York, and I am of counsel to SLOTNICK & NARRAL, ESQS., attorneys of record for the defendants above named.

2. That this affidavit is being submitted forthwith in support of an omnibus motion for (1) dismissal of the indictment; (2) discovery and inspection; (3) bill of particulars; and (4) suppression.

DISMISSAL OF THE INDICTMENT

3. The indictment in each of its two Counts is duplicitous.

4. The indictment, in its 2 Counts, fails to allege the offenses and to plead sufficient facts so as to bring the matters alleged within the law and to inform these defendants with sufficient particularity as to the precise charges or charge to be made against them.

5. The indictment in its 2 Counts contains mere conclusions and does not plead facts.

6. The indictment is vague, indefinite and uncertain and does not allege sufficient facts or circumstances tending to identify the particular offenses attempted to be charged.

7. Each Count of the indictment charges the defendants with the commission of the same offense in such a manner that the defendants could be convicted twice for the same offense.

8. That defendants request this Honorable Court to dismiss this indictment due to the fact that if defendants are prosecuted under each Count, they would be several times placed in jeopardy in violation of the double jeopardy provision of Amendment Five of the Constitution of the United States of America.

9. The defendants were arrested under a warrant charging them with the alleged violations which form the basis of the instant charges against them, that they were denied the preliminary examination granted them by Rule 5(c) of the Federal Rules of Criminal Procedure in that this denial of the right to hear the evidence against them within a reasonable time and to cross-examine the witnesses against them violated

Rule 5(c) of the Federal Rules of Criminal Procedure.

10. The indictment fails to charge an offense against the United States and is vague, indefinite and unconstitutional. Specifically, this indictment does not adequately charge that Federal crimes have been committed. It is also contended that the statutes under which the defendants were indicted are unconstitutional and ambiguous.

DISCOVERY AND INSPECTION AND/OR BILL OF PARTICULARS

11. That in order to properly prepare the defense of this matter on behalf of the defendants, it is necessary that your deponent have the information requested in the notice of motion.

12. That once your deponent has received the answers to the demand for bill of particulars from the Government, he may be able to make a further motion with regard to the indictment based upon a clarification of the facts of this case.

13. That your deponent believes, and thereon alleges, that the Government and persons who participated in the investigation of the offense charged against the defendants, have information which is favorable to the

defense of the moving defendants, including matters which might or could motivate testimony by persons whom the Government intends to call during the course of the trial, including acts of misconduct or offenses committed by said persons, and that in order to properly prepare for a defense, it is necessary that all of said information and the information requested in the notice of motion be made available to counsel for the moving defendants, in addition to any other material favorable to presentation of the defense of this case.

14. That it is necessary that the discovery and inspection requested be made available to your deponent in order that he might properly prepare and defend this action.

INSPECTION OF THE GRAND JURY MINUTES

15. That upon information and belief, the Grand Jury was misinformed as to the facts of this case and received evidence that was promulgated on hearsay and was insufficient as a matter of law.

16. It is essential that this Court peruse the Grand Jury minutes; and it is further requested that the Court herein, upon said reading, dismiss the indictment against the defendants or, in the alternative, allow an inspection of the Grand Jury minutes by the

said defendants.

17. All of the information being sought pursuant to discovery and inspection and the bill of particulars is material, necessary and reasonable for the proper preparation of the defense.

18. That it is believed that the discovery and inspection requested by the defendants is in the possession and control of the Government and may not be obtained from any other source.

MOTION TO SUPPRESS

19. That on or about the 25th day of May, 1972, in the early evening, the defendants were arrested by a narcotics agent.

20. That on or about May 25, 1972, the defendants were the subject of an illegal search and seizure upon their person and in premises to which they had a possessory interest.

21. That premises 90-19 31st Avenue, Jackson Heights, Queens, New York was illegally entered by narcotics agents and a complete search of the aforementioned premises without the benefit of a search warrant was commenced. As a result of that search, evidence to be used by the United States Attorney's office in this matter was uncovered.

22. That the defendants who were in the aforementioned premises, were also searched and evidence was received from their person as the result of an illegal search and seizure.

23. That at the time the defendants were searched and certain seizures were made, there did not exist probable cause for an arrest, it was not pursuant to a lawful arrest, nor was the aforementioned search a product of the defendants' consent. There were no existing search warrants that were shown to the defendants.

24. As a result of the aforementioned unlawful search and seizure, evidence was seized from the defendants which use is being intended by the United States Attorney at the trial of this action.

25. Furthermore, leads and other evidence were developed as a result of the aforementioned illegal search and seizure.

26. This evidence was received illegally and in violation of the defendants' Fourth, Fifth and Sixth Amendment rights under the Constitution of the United States of America.

27. The defendants pursue the fact that premises 90-19 31st Avenue, Jackson Heights, Queens,

New York, were premises in which they had a possessory interest and in which the public was not invited. Furthermore, it is the defendants' contention that the narcotics agents who entered the premises were not invitees.

WHEREFORE, it is respectfully requested that this Court issue an order:

(1) dismissing the indictment herein; or, in the alternative

(2) granting the defendants discovery and inspection;

(3) granting the defendants a bill of particulars;

(4) suppressing the evidence seized from the defendants and premises in which the defendants had a possessory interest.

s/ Raymond F. Narral

RAYMOND F. NARRAL

Sworn to before me this
12th day of July, 1972

s/ Barry Ivan Slotnick

BARRY IVAN SLOTNICK
NOTARY PUBLIC, State of New York
No. 31-3709365
Qualified in New York County
Term Expires March 30, 1973

DISCOVERY AND INSPECTION

- - - - - - - - X

SAME TITLE

- - - - - - - - X

1. Written, oral or recorded statements made by defendants or by any person on behalf of defendants or copies thereof, within the possession, custody or control of the Government, the existence of which is known, or by the exercise of due diligence may become known, to the Government, including but not limited to mechanical recordings of any type.

2. Permitting the defendants to inspect and copy or photograph any written or recorded statement or confession made by them, including but not limited to any mechanical recording of any type.

3. Permitting the defendants to inspect any copy or photograph, any recording, transcriptions and writings within the possession, custody and control of the Government, derived directly or indirectly, from or relating to the interception or overhearing of any telephone or other communication by the use of any wiretapping or eavesdropping device or technique.

4. Permitting the defendants to inspect and copy or photograph all evidence in the possession, custody or control of the Government favorable to the said defendants.

5. Permitting the defendants to inspect and copy

or photograph any written memoranda made by the defendants.

6. Permitting the defendants to inspect and copy or photograph a complete laboratory report with regard to the ''cocaine hydro-chloride.''

7. Permitting the defendants to inspect and copy or photograph all reports made, prepared or in the possession of the Government with regard to the alleged Schedule 2 narcotic drug controlled substance.

8. Permitting the defendants to inspect and copy or photograph all evidence that the Government will contend at trial was received and seized from them.

DEMAND FOR BILL OF PARTICULARS

- - - - - - - - X

SAME TITLE

- - - - - - - - X

Defendants, through their counsel, come now and hereby move this Court for an order requiring the United States Attorney to supply a bill of particulars and allow the defendants discovery and inspection of the following items:

1. State the substance of any oral statements made by the defendants which the Government intends to introduce as evidence at the trial.

2. Whether as to any of the acts or conversations intended to be relied upon by the Government at trial even though not alleged in the indictment (a) such acts or conversations were had at the instance of the Government; and (b) whether any person, including the defendants or any other co-conspirator, known to the Government, participating in or who arranged for any such act or conversation, was acting at the instance of or on behalf of the Government, and if so, identify such individual or individuals, state when, where and with whom they did so, and state whether such individual or individuals were directly or indirectly receiving or promised any money or benefit of any kind from the Government.

3. Identify (a) co-conspirators, if any, the Government will claim at trial defendants conspired with

directly; and (b) any person whom the Government will claim acted for or at the direction of the defendants, in connection with the crimes charged.

4. Identify any co-conspirator not named in the instant indictment whose identity was known to the Government at the time of the filing of that indictment.

5. Identify any co-conspirator now known at the time of the filing of the instant indictment who has since become known to the Government.

6. As to each oral statement made by the defendants, if any, which the Government intends to introduce evidence at the trial, state (a) the substance of such statement; (b) the date, approximate time of day when, and the place where, such statement was made, and (c) the person or persons present or overhearing any such statement.

7. Whether any information was received by the Government by means of electrical or other mechanical devices, or with the assistance thereof or from any other eavesdropping device, procedure or techniques whatsoever, and if any source of the Government's information or evidence was in whole or in part derived from the use of a mechanical device, identify the individual or individuals who used same.

8. State whether the Government has any knowledge or information if the defendants were overheard by the Government pursuant to an ''overhearing device'', including but not limited to bugging, wiretapping, etc.

9. State where and when each defendant had possession of the "cocaine hydro-chloride."

10. State whether each defendant had at any time actual possession known to the Government of the "cocaine hydro-chloride."

11. State where, how and in what form each defendant possessed the evidence to be used against him at the trial.

Dated: New York, New York
July 12, 1972

Yours, etc.

SLOTNICK & NARRAL
Attorneys for Defendants
15 Park Row
New York, N.Y. 10038
(212) 233-5390

RAYMOND F. NARRAL, ESQ.
of counsel

TO: HONORABLE ROBERT A. MORSE
United States Attorney
Eastern District of New York
Federal Building
Brooklyn, New York

NOTICE OF MOTION DATED APRIL 29, 1974

- - - - - - - - X

SAME TITLE

- - - - - - - - X

SIR:

PLEASE TAKE NOTICE that upon the annexed affirmation of Barry Ivan Slotnick, Esq., duly affirmed the 29th day of April, 1974, the memorandum of law submitted together herewith, the indictment herein, and upon all the proceedings heretofore had herein and infuturo, the undersigned will move this court before the Honorable Mark A. Costantino for an Order: suppressing the evidence seized herein - pursuant to an application to reargue; and for a new trial; together with such other and further relief as to this court may seem just and proper.

Dated: New York, N.Y.
April 29, 1974

Yours, etc.

BARRY IVAN SLOTNICK, ESQ.
Attorney for Defendant
Pedro Morell
15 Park Row
New York, N.Y. 10038
BE 3-5390

TO: HON. EDWARD BOYD, V
U. S. Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York

Attention: Assistant U. S. Attorney Kaplan

AFFIRMATION OF BARRY IVAN SLOTNICK

- - - - - - - - X

SAME TITLE

- - - - - - - - X

STATE OF NEW YORK)
SS:
COUNTY OF NEW YORK)

BARRY IVAN SLOTNICK duly affirms:

1. That he has been retained to represent the above-named defendant, Pedro Morell.

2. That a motion to suppress was had with regard to this matter which was denied, and he respectfully requests reargument with regard to the above-mentioned matter.

3. That subsequent to the trial, your affiant read the case of the United States v. Cooks, (15 Cr. L. 2062-2064) which was published on April 17, 1974 in the Criminal Law Reporter. On the basis of the aforementioned matter, together with the case decided therein, we respectfully request the right to reargue the warrantless search and seizure. The aforementioned matter appears to be directly on point with regard to the case at hand.

4. We further request a new trial based upon the Assistant United States Attorney's representation to the jury that the government witness Valdez had no holds and was apparently off probation at the time he testified.

5. We further wish to indicate to the court that proper 3500 material would have mandated a complete

receipt of the papers with regard to the informer Valdez' arrest and conviction which was not known to counsel prior to trial and had been in the government's possession and custody since the date of his arrest.

6. Furthermore, we respectfully adopt all the points raised by the defendant Burzon.

Dated: New York, New York
April 29, 1974

_____

Barry Ivan Slotnick

NOTICE OF MOTION DATED MAY 1, 1974

- - - - - - - - X

SAME TITLE

- - - - - - - - X

PLEASE TAKE NOTICE that upon the annexed affirmation of George L. Santangelo dated the first day of May, 1974 and upon all of the prior proceedings had herein, the undersigned will move this Court on the third day of May, 1974 pursuant to Rule 29A of the Federal Rules of Criminal Procedure for a judgment of acquittal or a new trial upon the grounds set forth in the accompanying affirmation and for such other and further relief as to the Court is just and proper.

Yours, etc.

GEORGE L. SANTANGELO
Attorney for Defendant, Bruzon
Office & P.O. Address
253 Broadway
New York, N.Y. 10007
212-267-4488

Dated: New York, N.Y.
May 1, 1974

TO: Assistant U. S. Attorney Kenneth Kaplan
United States District Court
Eastern District of New York
225 Cadman Plaza, East
Brooklyn, New York

AFFIRMATION OF GEORGE L. SANTANGELO

- - - - - - - - X

SAME TITLE

- - - - - - - - X

GEORGE L. SANTANGELO, an attorney duly admitted to practice in the State of New York, affirms the following under the penalties of perjury:

1. I am the attorney for the defendant, Ramon Bruzon, and submit this affirmation in support of the within requested relief.

2. The defendant having been indicted for conspiracy to violate the narcotics laws of the United States and possession of cocaine with intent to distribute same was convicted after a trial by jury of all counts charged in the indictment.

3. For the purposes of the relief requested herein, the defendant, Bruzon, joins in the motion submitted by co-defendant, Morrell, for a judgment of acquittal or a new trial as far as the grounds stated therein are applicable to him.

4. As further grounds for a new trial, the defendant, Bruzon, contends that:

(a) The failure of the Government to provide a certified criminal record of the main witness, Alfredo Valdez, violated the Government's obligation to fully disclose to the defense, material which is exculpatory and/or useful to the defense on cross-examination.

(b) The prosecutor's summation which included the assertion, unsupported by the evidence, that the Government's main witness, Alfredo Valdez, was under no compulsion or control by the Government and came to testify voluntarily was testimonial in nature and prejudiced the defense.

FAILURE TO DISCLOSE CRIMINAL RECORD OF ALFREDO VALDEZ

5. Alfredo Valdez was the only witness presented by the Government who testified to any complicity by the defendants in the acts charged in the indictment. The fact that Valdez was arrested sometime in 1969 for possession of cocaine, pleaded guilty sometime in 1970 and was sentenced sometime in 1971 to three years probation, was a vague and insufficient disclosure of the criminal record of the witness. Cross-examination by defense counsel could elicit no firm date from the witness when he pleaded guilty or was sentenced.

6. Valdez' credibility was attacked by the defense. The defendants took the stand and denied complicity. Whether, at the time of trial, Valdez was still on probation and, therefore, under the supervision of the Government, was a vital fact necessary for the conduct of the defense.

7. Repeated demands by defense counsel for the criminal record of Valdez were denied by the Government. Defense counsel's knowledge concerning the arrest, plea and sentence of Valdez was only disclosed during the trial. The defense had no opportunity to ascertain the true facts

concerning Valdez' criminal record whereas the prosecution who knew that Valdez was to be its chief witness since 1972, had ample opportunity to obtain such a record from the United States Attorney in Miami whose office had prosecuted Valdez in 1969, had negotiated his plea and had recommended the sentence of probation on the condition that he cooperate with the Bureau of Narcotics and Dangerous Drugs.

8. In Giglio v. United States, 405 U.S. 150 (1972), the Court rejected the United States Attorney's assertion that he was unaware of a promise made by another United States Attorney. The Court emphasized:

> ''The prosecutor's office is an entity, and, as such, it is the spokesman for the Government.'' Ibid at 154

The Supreme Court in Moore v. Illinois, 408 U.S. 786, 794-95 (1972) stated:

> ''The heart of the holding in Brady is the prosecution's suppression of evidence, in the face of a defense production request, where the evidence is favorable to the accused and is material either to guilt or to punishment. Important, then, are (a) suppression by the prosecution after a request by the defense, (b) the evidence is of a favorable character for the defense, and (c) the materiality of the evidence.''

It is clear that the defense repeatedly requested the criminal record of Valdez and that the prosecution continually denied it and that Valdez' probationary period, if it extended past the date of the trial of the defendants herein, would have indicated to the jury that Valdez had

reason to testify favorably for the Government. This evidence was highly material insofar as the entire defense rested upon the incredibility of the Government's witness. Valdez, together with the fact that the Government failed to call the one witness, Agent Eugene McElroy, who could substantiate various portions of Valdez' testimony which were contradicted by the defendants' testimony and other evidence, even though Agent McElroy was present at the prosecution table throughout the trial.

THE PROSECUTOR'S SUMMATION

9. The prosecutor's summation sought naturally to buttress the testimony of Valdez and in attempting to do so, misstated the evidence by saying that Valdez came from Central America to testify at the trial of these defendants voluntarily without threat, promise or under compulsion of the Government. That misrepresentation is grounds for a new trial. United States v. Drummond, 481 F. 2d 62 (2d Cir. 1973), Garris v. United States, 390 F. 2d 862 (D. C. Cir. 1968), United States v. Newman, 14 Cr. L. 2377, decided January 8, 1974.

10. In United States v. Newman, the Court stated:

> "'To support Nee's testimony that he had served as a witness without 'threats or promises or inducements', the prosecutor stated to the jury: 'Our office has nothing to do with that. We could not and would not deal with Mr. Nee. He plead guilty.' (Tr. 563-564) The government concedes that the above represents 'testimony', but argues that its effect was not prejudicial because 1) the jury knew that sentencing was within the

Judge's prerogative and 2) cautionary instructions were given to the jury.

The government's arguments are not persuasive. Had the U.S. Attorney believed that the jury actually understood the sentencing process, he would not have made the statement in the first place. It is more likely that the U.S. Attorney offered the comment in order to support the damaged credibility of the government's prime witness, Thomas Nee. A juror listening to Nee may well have discredited his testimony on the assumption that Nee had received a deal in return for a guilty plea and service as a witness. The 'testimony' by the prosecutor undermined this assumption, and thereby prejudiced the defendant. When a prosecutor misstates facts in his closing remarks or states facts outside of the record in such a way as to prejudice a defendant, a new trial is required.'' ***

The Government may not urge that no prejudice could have ensued because of the strength of its total case. First, the defendants testified and produced character witnesses in their support and the defendant, Morrell, produced an alibi witness in connection with a meeting supposedly had between him and Valdez. Moreover, the emphasis placed by the prosecution upon the nontestimonial facts in his summation indicated his high appraisal of their importance:

''His own estimate of his case, and of its reception by the jury at the time, is, if not the only, at least a high relevant measure now of the likelihood of prejudice.'' Garris v. United States, supra, at 866.

''The basic principle is clear enough: the government is obliged to disclose pertinent material evidence favorable to the defense, and this applies not only to matters of substance, but to matters relating to the credibility of government witnesses. Giglio v. United States,

405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972); Napue v. Illinois, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959); United States v. Hibler, 463 F. 2d 455, 460 (9th Cir. 1972); Loraine v. United States, 396 F. 2d 335 (9th Cir., 1968); cert. denied 393 U.S. 933, 89 S. Ct. 292, 21 L. Ed. 2d 270. There is a subsidiary principle: the government's motives in suppressing evidence may be material in determining whether a new trial is necessary. True, if the suppressed evidence is of unquestionable materiality, the government is not saved by good motives. Brady v. Maryland, 373 U.S. 83, at 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). On the other hand, when the suppressed evidence is of less obvious materiality, improper prosecutorial motives may be relevant for one of two reasons. The fact that a prosecutor intentionally fails to perform his duty may be regarded as an admission that performance would injure the government's case; an admission, so to speak, of prejudice which might, particularly in close cases, tip the scales. See, e.g., Napue v. Illinois, ante, 360 U.S. at 270, 79 S. Ct. 1173. Alternatively, even though we could not be persuaded that the defendant had been seriously prejudiced, if the prosecutorial conduct was censorable we might reverse a conviction in the interest of keeping the administration of justice beyond the 'suspicion of reproach,' or, perhaps, as a prophylactic against willfull prosecutorial misconduct. Kyle v. United States, 397 F. 2d 507, 514 (2d Cir. 1961); see Mooney v. Holohan, 294 U.S. 103, 112-113, 55 S. Ct. 340, 79 L. Ed. 791 (1935); cf. Weeks v. United States, 232 U.S. 383, 34 S. Ct. 341, 58 L. Ed. 652 (1914).
United States v. Gerard, 491 F. 2d 1300 (9th Cir., 1974) (emphasis added).

WHEREFORE, it is respectfully requested for the reasons stated above that this Court enter a judgment of acquittal or, in the alternative, a new trial and such other and further relief as to it is just and proper.

GEORGE L. SANTANGELO

Dated: New York, New York
May 1, 1974

1

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

Plaintiff, :

- against - : 72 CR 644

PEDRO MORELL and RAMON BRUZON, :

Defendants. :

- x

United States Courthouse
Brooklyn, New York
February 27, 1974
2:15 o'clock p.m.

B e f o r e:

HONORABLE [illegible] A. COSTANTINO, U.S.D.J.

[illegible] COURT REPORTER

[illegible] COURTHOUSE
[illegible] -4580

Appearances:

EDWARD J. BOYD, V., ESQ.
United States Attorney
for the Eastern District of New York

BY: KENNETH KAPLAN, ESQ.
Assistant United States Attorney

IVAN SLOTNICK, ESQ.,
Attorney for Defendant Morelli

GEORGE H. SANTANGELLO, ESQ.,
Attorney for Defendant Bruson.

- - -

MR. KAPLAN: My understanding is this is a motion to suppress. I would like Mr. Slotnick to frame the issues as to what is being suppressed here.

THE COURT: Right.

MR. SLOTNICK: On June or July in some term of this Court a motion to suppress was made and a hearing was granted by the Government. On May 25, your Honor, certain evidence was seized from the premises in which defendants had a possessiary interest. As a result of that we are moving to suppress that without a warrant.

MR. KAPLAN: Your Honor I would ask that the report of the agents are marked as 3500 material. I would indicate to the Court I have turned over a copy of that report earlier this morning to the attorneys for the defendants.

J E F F R E Y I. S C H A R L A T T, having been first duly sworn took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Sir, what is the nature of your employment?

A I am a supervisory agent with the Drug Enforcement Administration.

Q How long haveyou been so employed?

A Approximately seven and a half years.

Q How long have you been a supervisory agent?

A Approximately two years.

Q When you say supervisory agent, what do you mean by that particular term?

A After a certain point we have grades in our bureau. After grade thirteen you become a supervisory agent and it means you supervise other agents.

Q Were you so employed on May 25, 1972?

A Yes sir.

Q On that date did you have occasion to participate in the arrest of one Pedro Morell and Ramon Bruson?

A Yes sir.

Q Do you recall where that arrest took place?

A Yes, it was in a store at 90-17 31st Avenue Jackson Heights Queens.

Q Was it 19?

A It could have been, I thought it was 31st Avenue, Jackson Heights, Queens.

MR. SANTANGELLO: May I ask the other agents who will testify in the motion to suppress be excluded?

MR. KAPLAN: He will not be called to testify by the Government certainly.

THE COURT: He will not be called to testify.

Q Now sir, can you identify the two individuals who you arrested on that day?

A Yes sir, Mr. Bruson who is sitting at that table there and the other gentleman at the far end of the table here, Mr. Morell.

MR. KAPLAN: Would the record indicate he has identified the defendants in the courtroom.

THE COURT: So indicated.

Q Now sir, will you describe your duties prior to making the arrest on May 25, 1972?

MR. SLOTNICK: Objection your Honor.

THE COURT: I do not know what it has to do with it.

MR. KAPLAN: It is just a preliminary question as to what he was doing. I will rephrase it.

BY MR. KAPLAN:

Q Sir, prior to making the arrest you engaged in a surveyance of the premises?

A Yes.

Q When did that surveyance commence?

A Approximately 4:40 in the afternoon.

Q And at that time during the course of your surveyance and prior to the conducting of the surveyance were you in the possession of certain information with respect

to the defendants inside the premises and other individuals inside the premises?

MR. SANTANGELLO: Objection.

THE COURT: I will allow it, go ahead.

A Yes sir.

Q What facts were within your knowledge at this time?

MR. SANTANGELLO: Objection your Honor.

THE COURT: I will allow it.

A Well, we were there to arrest two individuals and seize at the time I knew four kilos of cocaine. This is what we were told.

Q Did you have a conversation with anyone with respect to an arrest that might be made on the premises?

A Yes.

Q With whom did you have a conversation?

A An informant named Alfredo Valdez and agent MacElroy.

Q Can you tell us if Mr. Valdez had provided reliable information to you and fellow agents of the then Bureau of Narcotics and Dangerous Drugs on previous occasions?

A Yes, I knew he did.

Q What was the nature of this information?

A It was similar information. He had given us

names of individuals who are selling narcotics and he made introductions to these individuals and had arranged for arrests and seizures to be made in the past.

Q Do you recall how many arrests were affected prior to May 25?

A Well I know he made eight or nine cases and there were more than one defendants in several cases.

Q Do you know if there were any indictments with respect to these cases?

A There were indictments in all cases.

Q Do you know if there were any convictions with respect to these cases?

A Convictions in all these cases.

Q Was he a paid informant?

A At first he was not and then he became a paid informant.

Q What happened during the course -- withdrawn. Were there any communications between yourself and Mr. Valdez concerning what was to take place in the premises onthat date?

A Yes there were.

Q What were the facts, what were the facts communicated to you?

A Agent MacElroy and myself were told by Mr.

Valdez he was going to that location, that store, to meet with two individuals who he had met several times in the previous weeks and that he was supposed to purchase four kilos of cocaine for I think it was $48,000.

Q And there came a time when you instituted surveyance, is that right?

A Yes sir.

Q And was there a signal that you were aware of that was communicated to you whereupon you were to do certain acts?

A Yes sir.

Q Can you explain that?

A Agent MacElroy and myself were advised by Mr. Valdez that he would go to the trunk and remove a black attache case in which we had placed $48,000, that that would be the signal he had seen the cocaine and the defendants were in the store and that we would proceed to arrest the people there.

Q Can you tell us for what period of time Mr. Valdez was in the store until he came outside to open up the trunk?

A About a half hour or so. It would make it about 5:15.

Q Did there come a time he went outside?

A Yes sir.

Q Did he go outside with another individual?

A Yes sir.

Q Who was that other individual?

A Mr. Morell.

Q What happened when he got outside?

A He went to the trunk of the car and Mr. Morell stood in front of the store for a minute and walked back inside. Mr. Valdez opened the trunk, took the attache case with the $48,000 in Government funds out of the trunk and started to walk slowly back to the store at which time we moved into position to enter the store.

Q When you say moved into position, how many fellow agents were with you at that date?

A I would think around ten, around there.

Q Where were they posted with respect to the premises?

A Up and down the street in different areas. They started to move slowly toward the front door.

Q Other than the information which has been supplied to you previously by Mr. Valdez did you have any knowledge as to how many people might be in the store other than Morell and Bruton?

A I knew there were other, other than Morell and

Bruson.

Q Did you have any knowledge there might be?

A I knew there were at least those two but I thought there might be more, I didn't know.

Q Tell us what you did with respect to the signal of the opening of the trunk.

A The other agents and myself went in through the front door and Mr. Morell was placed under arrest.

Q Can you tell us where exactly Mr. Morell was placed under arrest?

A On the first floor, I don't know exactly what part of the first floor but as soon as we went in the door.

Q Do you know who it was who placed Mr. Morell under arrest?

A I think it was Agent Sears.

Q It was not yourself?

A It was not myself.

Q At that time was something said or were there any statements made by anyone in the upstairs premises?

A Just as I was going downstairs to the basement I heard Mr. Valdez make a couple of statements.

Q What did he say?

A He said -- he gave a signal which meant go downstairs.

Q What was the signal?

A He said, "God damn, God damn."

Q What did the signal mean to you?

A It meant there was evidence in the basement but I was already on the way to the basement.

Q You were on the way to the basement in response to what sir?

A Well, I did not see Mr.Brunson, on the first floor so I was going down there to arrest him.

Q Explain to us the layout of the store with respect to the downstairs premises and upstairs premises?

A Well, there was a trap door leading to the basement stairs on the right of the upper floor and I pulled the trap door up and there was a stairs going down to the basement.

Q Was the trap door opened when you arrived at the premises?

A When I got to there it was opened. Another agent might have opened it, or it might have been opened before, I don't know.

Q What if anything didyou do?

A I went downstairs with a couple of other agents.

Q What happened when you got down the stairs?

A When we got to the bottom of the stairs I saw

Mr. Bruzon running toward the door.

Q What happened?

A I started chasing him. Two agents were ahead of me. When I saw that he was under arrest I did not go any further. I turned around and walked back towards the stair.

Q Where was the arrest?

A Outside the door in the courtyard.

Q When you say outside the door, you mean outside the premises?

A Right, in the back yard.

Q In other words, he was running from the basement outside the door towards the street?

A Towards the back yard which was the street. He was arrested out there.

Q What did you do when you observed this?

A I turned around and walked back towards the stairs to go up to the first floor and lying right in the middle of the floor was a bunch of bags with white powder.

Q When you say lying in the middle of the floor, describe to us the scene you observed at that time.

A Well there was a hammock that was draped from a pole, a support pole to the wall. It was about three feet off the ground and under that there was quite a few items including a shopping bag and some white bags with powder. It

was perfectly visible as I was approaching the stairs to go upstairs.

Q Did there come a time you made a seizure of that white powder in the bags?

A Yes. As soon as I saw it I went over to it and seized it.

MR. KAPLAN: I have the drugs in question. We will offer them in evidence at this point for the purpose of the hearing.

MR. SLOTNICK: No objection.

MR. SANTANGELLO: No objection.

MR. KAPLAN: May I ask this photograph be marked for identification.

Q Do you recall how many bags sir you seized at that time?

A Well I know how many exhibits we have but there were several bags, seven or eight bags just lying on the floor. There was a shopping bag with the exhibits in these.

COURT CLERK: Photograph marked for identification Government's Exhibit 1.

Q I show you what has been marked Government Exhibit 1 for identification and ask you if you can identify that photograph?

A Yes sir.

Q Can you tell us when that photograph was taken, if you know?

A This was taken on the date in question. Immediately after I saw it I sent for another agent who had photographic equipment and when he came downstairs I told him to take a picture the way it was before I touched anything.

Q Can you tell us if that fairly and accurately represents the premises relative to the evidence seized as you observed it on that date?

A This is exactly how I came upon it that day. The only thing missing is the hammock. We took it off to get a clear picture.

Q You took the hammock off?

A Yes sir, to get a clear picture.

Q A couple of further questions. When you went to chase Bruzon had you seen the --

MR. SLOTNICK: Objection, it is a leading question your Honor.

THE COURT: It is a rather leading.

Q When did you first see the white powder or what is known now as cocaine?

A When I was walking back after Bruzon had been arrested when I was going back to the stairs.

Q Can you tell us under what circumstances you observed the plastic bags.

MR. SANTANGELLO: Objection, asked and answered.

THE COURT: I will allow it.

A I was just walking back to go upstairs to see how things were up there and I just saw it laying on the floor.

MR. KAPLAN: Thank you. I have no further questions.

CROSS-EXAMINATION

BY MR. SLOTNICK:

Q Agent Scharlatt, you mentioned Mr. Valdez, who was your informant, is that right?

A He was not my informant. He was an informant for the Bureau.

Q For the Bureau whom you knew?

A Yes sir.

Q You accepted his statement to you as reliable?

A Yes I did.

Q As a matter of fact I think you characterized him on the witness stand as a reliable confidential informant, is that right?

A That is correct.

Q When was the first time he contacted you with

regard to the premises in question or anybody in your unit if you know?

A I believe it was a couple of weeks before the arrest he contacted Agent MacElroy who he was working for.

Q That is Agent MacElroy, is that right?

A Yes sir.

Q So several weeks prior to the date of the arrest and seizure, Agent MacElroy indicated to you he had been contacted by his informant Valdez?

A No, I was only told about it a few days before the seizure but I think I recall Agent MacElroy telling me he had been working on this investigation for a couple of weeks.

Q Doyou know what Mr. Valdez told Agent MacElroy during the few weeks?

A Only as relayed to me by Agent MacElroy.

Q What did Agent MacElroy tell you?

A As I recall he said that Mr.Valdez was attempting to initiate a case on some individuals in Jackson Heights and it was going to be four or five kilo seizure of cocaine or I don't know, he might have said a large seizure of cocaine. That is about it until I spoke to Mr.Valdez that day.

Q When do you remember Agent MacElroy telling you this?

A A few days prior to this.

Q To the seizure?

A Yes sir.

Q And then between that time and the time that you had a conversation with informant Valdez did anything else take place thatyou recollect with regard to the defendants in Jackson Heights in this case?

A I might be mistaken but I think that it was supposed to take place a few days earlier this deal and something put it off, but I think Mr. MacElroy told it me that but I am not too sure.

Q Do you know whether he had staked out the store in Jackson Heights prior to this or whether you had been on a stake out prior?

A I had not and I do not recall whether he was or not, I don't know.

Q When was the first time in May that you spoke to informant Valdez?

A That day, the 25th I think.

Q Where was the meeting?

A It was in a parking lot in Jackson Heights, Queens. I think that was the first place I spoke to Mr. Valdez.

Q Would that be in the area?

A It would be ten minutes away I think by car.

Q Do you recall the address where the seizure took place?

A I thought I did.

Q To the best of your recollection?

A 90-17,31st Avenue I thought.

Q If your record said 90-19 would that refresh your recollection?

A It does not refresh my recollection but I would not be surprised if that was the address.

MR. SLOTNICK: We have a stipulation from the Government.

MR. KAPLAN: So stipulated.

Q And so you met Mr.Valdez about a half hour or an hour before you went to the stake out at 90-19 31st Avenue, Jackson Heights, is that right?

A Yes sir.

Q And as best as you can remember exactly what did he tell you and what did he tell Agent MacElroy?

A As best as I remember he said that we were going to a store at that address, 90-19 31st Avenue, Jackson Heights and there would be two individuals there and they would have four kilos of cocaine and they expected $48,000 in payment for it. Then we gave him instructions how to proceed with letting us know that he had seen the cocaine and we should arrest the

defendants. That was basically it.

Q Did you give him anything?

A Yes, we gave him $48,000 in a black attache case.

Q Do you normally carry $48,000 with you in a black attache case?

A No, we had gotten that earlier in the day. We had it for this purpose specifically.

Q Who had garnered that money?

A Guarded it?

Q Who had received that money?

A I do not remember who picked it up from New York but I know we used my attache case to put it in.

Q And this happened sometime earlier in the day, is that right?

A That is right. I believe it was -- it could have been a few days before if my recollection is correct, of the deal supposedly going, a few days before is correct. If it is not then it was that day.

Q Then you might have kept the money for a few days or kept it in a vault someplace?

A We had a safe in my office which I had a combination to but I do not recall whether we had it there a couple of days or if it was picked up that day.

Q So therefore that money was segregated for a specific period of time from the treasury or from whatever fund you used for the purpose of purchasing cocaine by Mr. Valdez from the defendants in this case.

A Well, let me explain how it works. We have a certain amount of money in the Westbury office which I have access to. If we needed additional money it would come from New York City. When you say specifically allocated for this case, until the time I took it out and made an entry in the log it was not allocated specifically for this case.

Q But it was there and you knew you could use it for this case?

A Yes sir.

Q By the way you mentioned the Westbury office. This was at a time when there was a United States District Court out in Westbury, is that right? If you remember.

A There was one there. I don't know if it was there at that time, it might have been.

Q Was it far from your office?

A The Court was on the same floor as our office.

Q You met Mr. Valdez about what time?

A Well it was --

Q In the parking lot.

A About an hour before we got to the address in

question.

Q So it was about 3:40?

A That would be a good guess.

Q Your best recollection it was perhaps a few days beforehand that you had a recollection or knowledge that there would be a meeting in which you would hand over some money to Mr. Valdez and that there would ultimately be a seizure and arrest, is that right?

A Yes sir.

Q When you met Mr. Valdez in the parking lot you discussed the method of operation, the surveyance and the seizure?

A With Mr. Valdez we did not discuss all that. We just discussed, I asked him what he expected to happen and we told him what we wanted to happen.

Q What did you tell him you wanted to happen?

A We told him we needed a signal which would indicate he had seen the cocaine and we should move in and arrest the two defendants and we told him what the signal would be, how to proceed with going to the trunk and getting the money out and to make sure he did not give the money to the defendants.

Q Did you meet at approximately 3:30?

A It could be approximately 3:30, yes sir.

Q In Jackson Heights, and to finalize the plans for the upcoming seizure and arrest?

A Yes sir.

Q Do youremember Mr.Valdez describe the premises in Jackson Heights that the seizure was to take place at?

A Yes he did.

Q When you arrived there did it match your expectations?

A Yes sir.

Q As a matter of fact this information as in the past was reliable once again?

A Yes it was.

Q During your surveyance what did you observe?

A I observed Mr.Valdez park his car and go into the store. I then observed Mr. Bruson, speak to an unknown individual. I remember he had a green suit on. We thought he might be involved in the case and that is why it comes to mind now. Mr.Bruson went back in the store. Then a little while later Mr.Valdez and Mr.Morell came out. Mr. Valdez went to the trunk and Mr. Morell walked back inside. He only stayed out for a few seconds. Mr. Valdez took the case out with the money very slowly and proceeded back towards the door as he was told to do.

Q And then what did you do?

A We went in the door.

Q When you say you went in the door just tell me what you did and what you saw?

A I walked down the street and I got to the door just behind Mr. Valdez going in and I went in the door. Another agent preceded me.

Q Were there other agents prior to you?

A Yes sir.

Q When you say Mr.Valdez was just inthe door, there were other agents that were in front of you?

A Yes sir.

Q Did you observe Mr. Valdez open and shut the door and walk in?

A No sir.

Q Tell me exactly what you saw?

A I saw Mr. Valdez walk towards the door and then I could not see him anymore. I assume he went through the door. I was walking down the block and I saw other agents going in the door and I went in right behind.

Q Did you ever see the door shut?

A No I did not.

Q And di d you ever see any agents walk in so close behind Mr. Valdez as if they were like one?

A I could not see in the doorway at that time, no

sir, I did not see.

Q Actually you did not know who walked in first?

A No I do not know.

Q As far as you know agents could have walked in first?

A I do not know who was in first or second, I don't know.

Q You stated that Mr. Morell was placed under arrest?

A Yes sir.

Q At the time Mr. Morell was placed under arrest was any seizure made?

A No sir.

Q What was he arrested for?

A Violation of Federal Narcotics Law.

Q At the time Mr. Morell was placed under arrest who placed him under arrest?

A I think Agent Sears, I am not sure.

Q At the time Mr. Morell was placed under arrest, had you seen cocaine or anything that was contraband?

A No sir.

Q At the time Mr. Morell was placed under arrest did you to your knowledge know of any conversation that he had with the informant alleging a sale?

A I knew through the signal that was all I know.

Q Well, you did not know through the signal Mr. Morell had had a conversation, you know through the signal somebody had a conversation?

A That is right, yes sir.

Q And you observed two individuals in the store, is that right?

A At which time?

Q At any time prior to the arrest of Mr. Morell?

A I had only seen three people all together in the store, Mr. Morell, Mr. Bruzon and the informant, those are the only three I had seen.

Q Therefore to your knowledge there were at least two people?

A Two defendants.

Q Two individuals other than Mr. Valdes.

A Yes that is right.

Q That were in the store?

A Yes sir.

Q Can you tell us the names of the agents as best as you recollect that were present on the premises on that date?

A Yes, Agent MacElroy, Agent Sears, Agent McElvin, Agent Shein -- I can't think of any other agents that were

there, with two other individuals from the Nassau County District Attorney's Office. There were more but I can't recall which ones there were.

Q Schnepper, Shein, Stromfeld, Culver?

A That is right.

Q McElvin?

A Yes.

Q Was there also a chemist present?

A No sir.

Q There was a photographer present?

A No, Agent Culver served as our photographer.

Q And Agent Culver had with him a camera?

A That is right, I told him to bring one.

Q When did you tell him to bring the camera?

A Just before we left the office.

Q Did you tell him what the purpose of the camera was?

A Yes.

Q What did you tell him?

A To take a picture of any evidence which we found.

Q And so he brought his camera?

A Yes sir.

Q And indeed he did take pictures?

A Yes.

Q Did the informant indicate to you he had a conversation with anyone regarding these premises?

A I do not follow. When was this?

Q Prior to the seizure and arrest or the arrest and seizure.

A Yes, he did, he told me he had met two individuals who were supposed to have cocaine and he had been in the premises before.

Q Did he tell you whether he had ever seen cocaine before on the premises?

A He did not tell me that either way, not that I recall.

Q But he had indicated to you that he had been to these premises before and he had reported this fact to another agent?

A Yes.

Q Who was under your charge, is that right?

A Yes.

Q And that other agent was?

A McElroy.

Q MacElroy, that would have been at least three weeks prior to the best of your recollection?

A I would say it could have been a couple of weeks prior, it could have been a week prior, it certainly was

before.

MR. SLOTNICK: I have no further questions.

THE COURT: Do you have any questions?

MR. SANTANGELLO: Yes I have some questions.

CROSS-EXAMINATION

BY MR. SANTANGELLO:

Q How many cars were outside the premises prior to the arrest?

A You mean Government cars? I would guess around five or six.

Q Can you tell me whereis in relation to the two corners the store is in the middle of the block or the end of the block?

A Oh, it is not in the middle as I recall. I think it is towards one end but I am not sure on which street that end is.

Q About how far from that end.

A Maybe a quarter of the way down the block.

Q How many feet would you estimate?

A I would just be guessing, thirty or forty feet. That might not even be close.

Q How long was the block?

A It is a very long block as I recall.

Q More than 200 feet?

A No, not that long, 150 feet maybe.

Q In relation to the store where were these various Government vehicles parked?

A There were quite a few different locations. I was parked, I was out of the car. My car was parked around the corner.

Q Where were you stationed out of the car?

A I was standing in the middle of the block across the street.

Q Approximately how far from the store?

A 100, 150 feet.

Q And the other cars?

A And they were also so they could see the location. I can't say where each one was. I really don't recall. They were around, that is all I can say.

Q Were all the Government cars in your view as you looked at the store?

A No sir.

Q Was any Government car in your view as you looked at the store?

A Yes, I am sure there were. I remember seeing a couple of them.

Q When Mr. Valdez -- withdrawn.

Where did Mr. Valdez park his car?

A Right in front of the store.

Q And the distance between the car, Mr. Valdez car and the store was approximately how many feet?

A A very short distance, the distance of the sidewalk.

Q When Mr. Valdez took the briefcase out of the trunk of his car and began walking toward the store did you notice any agents doing anything?

A Yes I saw them moving toward the store.

Q Which agents did you see move toward the store?

A I specifically recall Schnepper, Shein and Sears, McElvin.

Q McElvin?

A McElvin, yes. Those are the ones that I recall.

Q Where were they posted prior to moving towards the store?

A I know McElvin came from my direction and the other ones came from the other direction.

Q McElvin was behind you?

A I think he was across the street but he could have been behind me. I know he turned around and he was there.

Q He was approximately 150 feet away fromthe store?

A I would think so, yes.

Q Schnepper and Shein where were they placed prior to moving toward the store?

A I think I remember coming from the other direction. I don't know where their surveyance station was.

Q When you first saw them how far away from the store were they?

A Closer than I was, I would say.

Q 100 feet?

A Yes, all right.

Q How about Agent Sears, when you first saw him how far away from the store was he?

A I do not recall at all where he came from. I remember first seeing him as he came into the store. He beat me there but I don't know where he came from.

Q Prior to Agent Sears beating you to the door is it your testimony that Agent Schnepper and McElvin had beaten you to the store?

A Yes sir.

Q You do not know what happened at that door, do you?

A No.

Q From your position where you were standing outside the store you could not see that door, could you?

A I could see it until I crossed the street and

move toward the door. At this point I couldn't see it anymore.

Q How far did you move toward the store before you lost sight of that door.

A Well, I crossed the street toward the same side the store was on. At that point I could not see the doorway anymore.

Q At the point or at the time you reached the sidewalk across the street had you noticed whether any agents had arrived at the door?

A No, they had not.

Q Had not?

A They had not.

Q So as long as you saw that door the agents had not arrived, is that right?

A That is right.

Q Did you see the informant Valdez enter the store?

A I saw him walk towards it but I did not see him go through the door.

Q Let us get to what happened inside the store. At a certain point in time you walked into the store, is that right?

A Yes sir.

Q When you got to a point a few feet in front of

the door what did you observe?

A The door was open. As I went through the door I saw agents inside and I saw Mr.Morell under arrest.

Q So you saw I take it Agent Schnepper, Agent Sheen, Agent Sears and Agent McElvin, is that right?

A I really can't say. I saw them all because I don't know which ones I saw once I got inside. As soon as I noticed everything was under control I ran toward the basement so I do not know exactly who was there.

Q How long did it take to get everything under control.

A When I was there he was already under arrest and things were sort of under control.

Q So Mr. Morell I take it had his hands on some wall, is that right?

A I do not recall but that is normal procedure, he probably did.

Q And do you remember as you walked into the store whether Mr. Morell was on the right or lefthand side of the store?

A No I cannot remember.

Q You rushed to what did you call it?

A It is sort of a trap door with stairs going to the basement.

Q Had you had any conversations prior to the raid with Mr.Valdez with regard to what he was going to do once he got in the store?

A Yes.

Q What did you tell him to do?

A I did not tell him I think to do anything at that point. I think Agent MacElroy made the suggestion we should proceed to the basement, and he would give us a certain signal. I remember hearing that, I did not say it.

Q In another words Agent MacElroy mentioned the basement, is that right?

A Maybe Mr. Valdez mentioned the basement. I donnot recall which one brought it up.

MR. SANTANGELLO: May I have this marked please?

COURT CLERK: Document marked for identification Defendant's Exhibit A.

Q I show you this picture and ask you if you recognize what that is?

A Yes.

Q Can you tell me what it is?

A A photograph of the front of the store.

Q Taken from the inside or outside?

A Inside.

Q Does that represent the inside of the store as

it appeared onthe day of the raid?

A Well I do not really recall but it looks like the same store. Things could be in different positions but basically it is the store.

Q But the door is basically the same door?

A The door is in the same place right.

MR. SANTANGELLO: I offer it.

MR. KAPLAN: No objection.

THE COURT: Mark it.

COURT CLERK: Defendant's Exhibit A previously marked for identification received in evidence.

Q The stairs that led down to the basement, did they proceed toward the front of the store or toward the back of the store?

A As I recall toward the front of the store.

Q How did you climb down the stairs?

A Just climbed down and ran down the stairs.

Q Did you walk down in a natural way, frontwards? Youdid not climb backwards?

A No, just walked down.

Q About how far into the basement towards the front of the store did the stairs take you as you got to the bottom?

A Very close I think.

Q Very close to the wall?

A Yes I think so.

Q About how far?

A I do not remember but certainly most of the store was behind me when I got to the bottom of the stairs.

Q Did any agent precede you?

A Yes sir.

Q Who did?

A Schnepper and Sears.

Q Did you hear anything when you were on the first floor, coming from downstairs?

A No sir.

Q You did not hear anything?

A No sir.

Q Sears and Schnepper preceded you down the trap door, is that right?

A That is right.

Q How long would you estimate it took before you got to the bottom of the stairs after Sears and Schnepper started down the hole?

A Schnepper went right in front of me but Sears was quite a few feet ahead.

Q When you were at the top of the stairs did you see Ramon Bruzon?

A No I did not.

Q When you were at the bottom of the stairs did you see Ramon Munson?

A Yes sir.

Q Where did yousee him?

A Right after I turned from being on the bottom of the stairs I saw him just about out the back door.

Q So when you saw the door it was already open, is that right?

A Yes.

Q You never saw him run did you?

A Yes sir.

Q When did you see him running?

A As soon as I got to the bottom of the stairs and turned areound I saw him just as he cleared the door.

Q Did he open the door?

A I recall the door being opened. I don't know if he opened it or it was open.

Q Were there any agents stationed in the back?

A Yes, one agent and one Nassau District Attorney.

Q Who made the arrest?

A Agent Culver or Mulligan.

Q Those were two people in the back?

A Yes.

Q Did you hear anybody say anthing when you got downstairs?

A Yes, Sears was right behind Bruson and I heard him yell "Police" and that is all I heard.

Q When -- prior to your hearing the word "police" had you seen Bruson?

A Yes. I don't know if I saw him first or I think I heard the word first before I saw him. I think I heard Sears yell before I saw him.

Q Then you turned around, is that right?

A I could have been inthe process of turning around it happened so fast.

Q You would have to turn around to see the back entrance of the door, is that right?

A Yes.

Q When you turned around Bruson was out the door?

A As I recall he was right at the door.

Q Did he have his hands up?

A No, not when I saw him.

Q Where were his hands?

A I do not know. I guess at his side or front of him, I don't know.

Q Was he on the basement level or on the step?

A I think he was on the step.

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Q Did you see any other agents outside?

A No. I knew I had stationed them there but I did not see them.

Q When did you know that Bruson had been arrested?

A As I just about reached the steps to go out the back door I think Schnepper or Sears, it was probably Schnepper, said they got him in the back and that was it.

And I turned around.

Q To your knowledge he was not arrested on the stairs.

A Not that I saw, no, he must have been in the backyard.

Q Do you know where the other two agents, Mulligan and who was the other?

A Culver.

Q Mulligan and Culver were stationed in the back-yard?

A No I had never seen them take up a position. I was in front and told them to go cover the back.

Q You do not know if they were standing right on the stairs?

A I know they were not standing in the stairs because I would have seen them.

Q You do not know?

A I did not see them there.

Q You did not see them there?

A That is right.

Q How far from the bottom of the stairs was the group of packages that you later saw?

A Pretty close.

Q How far?

A Between five and ten feet I guess.

Q How many lights were in the basement?

A I don't know.

Q Do you remember saying it was dark.

A At this point I do not recall whether it was very bright or just enough light to see but we could see with no trouble. That is all I can say.

Q You removed the hammock did you say?

A Yes I did.

Q Where was that hammock draped?

A It was strung from the wall either through a crossing diagonally to the other wall or it was on a pole but it was over the floor about three feet and it was strung between two things, I don't know.

Q What was the first thing thatyou noticed as you walked back towards the stairs?

A I noticed these packages laying under the hammoc

Q What did they appear to be?

A There was no doubt in my mind --

Q What did it appear to be.

A It was a shopping bag and there were plastic type bags with white powder.

Q They were under the hammock you say?

A They were beneath the hammock, yes.

Q And you lifted the hammock off?

A First I just moved it to the side.

Q Then you saw plastic bags?

A I saw them before I got there. To get a better view I pushed it aside and bent down and looked at them. I did not want to move anything until I called for the photographer.

Q Was there anything else around the plastic bags?

A As I recall there was quite a few things. We have photographs of it. I cannot remember exactly what was there.

Q Do you recall --

A I remember, I think there were kinds of utensils but I am not sure. If I can look at the photograph it would help.

Q When you say utensils what do you mean by utensils?

A You see, I looked at the photograph a few minutes

ago and I think there wer a lot of things around the packages but I am not sure. If I said utensils it might be a knife or something like that but I don't recall.

Q Was there any white powder on the floor?

A Yes.

Q Spilled on the floor?

A Yes.

Q Were any of the bags broken?

A I do not remember.

Q Was there a suitcase around the area?

A There might have been, I don't recall sir.

Q Was there a can around the area?

A There were lots of cans.

Q Did you inspect any cans?

A Well I don't know. I don't think I opened any cans that looked like paint cans but if there were cans lying with the powder I probably looked in them, I don't recall.

Q Did you open the suitcase?

A Not that I recall, no sir, I do not think so.

Q At the time you went to the store and made the arrest and the seizure did you have any kind of warrant with you?

A No sir.

Q Have you ever used this informant before to

apply for a search warrant?

A Personally I have not.

Q Do you know whether he was used to form the basis of an application for a search warrant?

A I do not know.

MR. SANTANGELLO: No further questions.

MR. KAPLAN: I have a couple of questions your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. KAPLAN:

Q When did you first meet with Valdez on that day?

A On that day I am not sure whether he came to the office or I first met him out in Queens in a parking lot, but I remember meeting him in the parking lot.

Q Approximately how much time prior to the surveyance did you meet with Mr. Valdez?

A I know I met with him an hour before the surveyance.

Q When was the first time you learned that the deal would take place at the premises in question?

A I think I knew that back in the Westbury office.

Q When was that?

A Before we went in the street that day.

Q Approximately when, 1:00 o'clock?

A That might be a fair time. I don't know whether it was morning or afternoon, I don't know.

Q Who did you learn that from?

A I would think Agent MacElroy gave me all the information.

Q As to your own personal knowledge from Mr. Valdez the first time you learned it was on in the parking lot at 3:30?

A That sounds right, yes sir.

Q Other than the contraband powder seized in the basement were there any other objects seized at that time?

A Just the rifle from the basement.

Q Can you tell us where that was located?

A Hidden up in the ceiling of the basement.

Q You say rifle --

MR. SLOTNICK: Objection, we are not trying to suppress that.

MR. KAPLAN: It goes to the state of mind your Honor as to what danger these agents might have been in in going down there.

THE COURT: I do not think it is relevant.

MR. KAPLAN: Having weapons to confront them.

THE COURT: I do not think it is relevant at this

time.

MR. KAPLAN: Just for the record your Honor I would ask that question.

THE WITNESS: What was the question?

THE COURT: He said it was up in the ceiling.

Q Can you tell us where the hammock was located -- withdrawn.

Can you tell us where the hammock was located with respect to the contraband, how many feet off the ground was the hammock?

A I think about three feet off the ground above the contraband.

Q In removing the hammock did you see the contraband prior or subsequent to the removing of the hammock?

A I saw it before I removed the hammock. I removed the hammock to get a photograph of it.

MR. KAPLAN: I have nothing further.

MR. SANTANGELLO: I have a couple of more questions your Honor.

RE-CROSS-EXAMINATION

BY MR. SANTANGELLO:

Q You observed paint cans and painting equipment in the store, didn't you?

A Yes sir.

Q Both upstairs and downstairs?

A I only recall downstairs now but it might have been upstairs.

Q When you arrested Ramon Bruzon do you remember how he was dressed?

A Yes I do.

Q How was he dressed?

A Sweatshirt and pair of pants.

Q Were the pants paint splattered?

A There was white on them. It might have been paint, I don't know.

Q How about the shoes?

A I don't recall the shoes.

Q Didn't Valdez tell you that both Mr.Morell and Mr.Bruzon were partners in a painting concern?

A Yes he did.

MR. SANTANGELLO: No further questions.

RE-CROSS-EXAMINATION

BY MR. SLOTNICK:

Q You observed the storefront, is that right when you say a storefront this was not a store that was open to the public, am I correct?

A That is right.

Q This was a private little business?

A It was a storefront but it did not look like it was open to the public.

REDIRECT EXAMINATION

BY MR. KAPLAN:

Q With respect to the arrest of Mr.Bruzon and the clothes he was wearing thatday, can you tell us if you know if the sweatshirt he was wearing contained any white powder or it was paint, from your personal knowledge?

A Well it had white on the front. I do not know whether it was powder or paint.

Q In other words it could have been paint on the shirt?

A It could have been anything that was white.

RE-CROSS-EXAMINATION

BY MR. SLOTNICK:

Q That sweatshirt, did you give it to the chemist to analyse?

A No I did not take the sweatshirt.

Q If it had powder you believed to be cocaine would you have given it to the chemist to analyse?

A Yes I would if it was cocaine.

Q Therefore you had no thought of a sweatshirt had cocaine?

A No sir, I guess it did not.

Q And it was paint?

A I can't say that either.

MR. KAPLAN: Objection.

THE COURT: He says he cannot say that.

MR. KAPLAN: I have no further questions.

The Government rests.

THE COURT: Do you have any witnesses?

MR. SLOTNICK: May we have a moment your Honor? We have no witnesses.

THE COURT: Defendants rest and the Government rests.

Are there any motions?

MR. SLOTNICK: Based upon the testimony we would respectfully request that the material alleged in the motion to suppress be suppressed against the defendant Morell and if I may I will indicate the reasons why.

There are a beautiful line of cases other than the good language in Trippiansi mentioned in my brief before the Court in which it is suggested that officers get and obtain search warrants and at page twelve your Honor, a search and seizure without a warrant incident to a lawful arrest is always considered strictly limited -- there must be something more in the way of necessity of a lawful arrest.

I suggest that the Supreme Court of the United States has in Trasca, in Jones and MacDonald, where the police was told to go ahead and get a search warrant.

Here we have a case unquestionably that was under investigation for at least three weeks. A reliable, confidential informant to the supervisor of the Bureau of Narcotics and Dangerous Drugs, the organization that was involved in this arrest, a reliable confidential informant, a man they thought of enough to give $48,000 to, information they had three weeks in advance information they had in the Westbury office on the same floor as one of our judges sat, they had an obligation to get a search warrant your Honor and that is why the suppression must lie.

MR. SANTANGELLO: There is one further reason for suppressing this in evidence and that is on the ground the People have failed utterly to sustain their burden to show that the entry into the premises was made by the police with notice of their purpose and authority. The one witness who testified for the Government in this case was clear and unequivocal in his testimony. Once he got across the street he could not see that door and once he lost sight of the door at the time he lost sight of the door no other agent was next to that door or near that door. Therefore the people, the Government

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has not met its burden of showing that notice of purpose and authority was given prior to the entry.

THE COURT: Mr. Kaplan.

MR. KAPLAN: Your Honor, addressing myself to this one point of notice and purpose of authority, recent cases have held that if there is a Government agent already invited in the premises as Mr. Valdez was, he was a paid informant, then the Government is under no obligation to give notice of purpose and authority. The Government relies upon the fact there was an arrest made here of Mr. Morell, based upon probable cause, the reliability of the informant and that the agents pursuing the fact that knowledge they had Mr. Bruzon was in the basement that he might be fleeing and he might destroy the contraband followed him down the stairs and he was a fleeing defendant.

On the way back Agent Scharlatt found the contraband in plain view. Pursuant to the College of New Hampshire this is a rather simple plain view case. I do not know what issues are raised here.

THE COURT: The Court finds on the basis of the testimony given before it there should be no suppression of the evidence. The testimony is such that there was all probable cause and desirability and it was proper under the circumstances.

We are ready to select the Jury. Your motion is denied.

(At 4:06 p.m. there commenced the selection of a Jury and at 5:30 o'clock p.m. the Court was adjourned until 10:30 a.m.)

* * *

DAY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

_ against _ 72 CR 644

PEDRO MORELL and
RAMON BRUZON,

Defendants.

----------X

United States Courthouse
Brooklyn, New York

February 28, 1974
10:00 A.M.

B e f o r e :

HON. MARK A. COSTANTINO, U. S. D. J.

Ilene Ginsberg
Acting Official Court Reporter

Appearances:

EDWARD J. BOYD V, ESQ.,
United States Attorney
for the Eastern District of New York

BY: KENNETH KAPLAN, ESQ.,
Assistant United States Attorney

BARRY SLOTNICK, ESQ.,
Attorney for the Defendant Morell

GEORGE SANTANGELO, ESQ.,
Attorney for the Defendant Bruson

(Prospective jurors present in the courtroom)

THE CLERK: Criminal cause on trial, U.S.A. v. Pedro Morell and Ramon Arruza.

MR. KAPLAN: May we have a side bar, your Honor?

(Side bar discussion)

MR. KAPLAN: I believe your Honor, there are certain specific requests as to questions for the panel.

One of them is, do any prospective members of the jury have criminal convictions or arrests.

THE COURT: They wouldn't be here.

MR. KAPLAN: Have they been victims of crime -- any members of their family or is there anything in their background to indicate a bias against law enforcement officials or the Government.

THE COURT: I asked them that.

Don't you understand that if they had a criminal record they wouldn't be a juror? They can't serve.

MR. KAPLAN: Perhaps members of the family or friends have been victimized by the Government --

THE COURT: I do it in hijacking or armed

robbery cases but not here.

There was one woman who said she couldn't serve because she had a drug problem in her family.

Do you think they are stupid?

MR. SANTANGELO: I'm not sure the jury is not confused with the Government's burden beyond a reasonable doubt.

THE COURT: I will give them that later but I will not give the definition now.

MR. SANTANGELO: I would like you to ask, "Do you accept the proposition that each defendant is assumed innocent unless and until the Government proves his guilt beyond a reasonable doubt?"

THE COURT: I've said that.

MR. SANTANGELO: But not in content. At one point you said, "The defendant is presumed innocent until the start of the deliberations."

THE COURT: I never said that. I asked if the Government proved its case beyond a reasonable doubt would they hesitate to convict the defendant or if they had any doubt would they have any hesitantcy in acquitting the defendant. Do you want more than that?

MR. SLOTNICK: I don't see the harm. I am not

sure if your Honor gave that.

THE COURT: I said the exact same thing yesterday. I will get the minutes if you want them and show them to you. You fellows weren't listening.

MR. SLOTNICK: I have submitted for the record, my requests to charge, to the United States Attorney and the law clerk.

MR. SANTANGELO: I'll have mine at one o'clock.

THE COURT: Yes.

MR. KAPLAN: I will have them too.

THE COURT: I will give you a copy of the Court's charge.

MR. SLOTNICK: I spoke to your Honor's law clerk with regard to my appearance before Judge Roberts and Judge Roberts will call me at two o'clock sharp. It will be brief.

THE COURT: You're going to call him on the phone, speak to him on the phone?

MR. SLOTNICK: No. I have to be there.

THE COURT: All right. As long as you don't abuse it. Don't back me up against the wall. I'm trying to be fair.

MR. SANTANGELO: I don't know if the case will go to Monday but I have an appearance in the Court of Appeals.

THE COURT: All right.

MR. KAPLAN: I have another request.

In the past, I recall your Honor makes a statement to the jury that this is the Federal Court and anything read with respect to the New York State Drug Law --

THE COURT: I already spoke to them about punishment -- will they accept the fact that the Court is the only one to render punishment.

MR. SLOTNICK: The exposure here is greater than in the State Court.

MR. KAPLAN: There is a tremendous controversy and I ask your Honor to make that statement.

THE COURT: All right.

(Conclusion of side bar discussion)

(Following held in open court)

THE COURT: There are one or two things that have been requested of the Court by both sides, that is the Government and defense lawyers and that is that I ask at this time or make a specific statement to you at this time that we are in the

Federal Court and the Federal Rules and Federal Law applies in all aspects of the case including the question of punishment which the Court administers and no one else. It has nothing to do with state law, absolutely nothing to do with state law.

Also, I had thought I was quite specific yesterday but I will review it again: I said that in every criminal case, at the time the Court charges you, the Court will tell you what is meant by beyond a reasonable doubt.

Now, beyond a reasonable doubt I won't define for you now but that is the standard to base most of your deliberations on; whether or not these defendants, after you hear all the facts in the case, are guilty or innocent and the standard you will apply is beyond a reasonable doubt which the Court will define at the proper time and through the entire trial it does not change; that the presumption of innocence runs with the defendants.

All right.

(Whereupon a jury consisting of twelve members and two alternates were duly sworn and impaneled by the Clerk of the Court at 12:00 noon)

THE COURT: Now, we will show you where your

jury room is, take a short recess and come back in five or ten minutes.

(Recess taken)

(Jury entered jury box at 12:15 p.m.)

THE COURT: Now Madam, you are going to be the Forelady --

JUROR NUMBER ONE: Me?

THE COURT: Yes. If you sit in seat number one you are selected.

JUROR NUMBER ONE: I accept.

THE COURT: I will call you Madam Forelady and members of the jury and tell you that we are now going to start this trial and most of you have sat on trials before so you are familiar with the procedure and for those who are not familiar with the procedure, the procedure will be that the Government will open and tell you what he intends to prove as far as the case is concerned and the indictment and I want to again advise you that whatever is read from that indictment is just a mere accusation, a mere charge and nothing more. It is not evidence in the case and it must be proven from the lips of witnesses on the witness stand.

The defense lawyers may or may not open. If

they wish to they can.

Now, what must you look for during a trial? During a trial it is important that you notice the witnesses taking the stand because the greatest issue involved during the trial is the believable testimony and you must exercise your common sense and judgment and there are certain things you can use to determine whether a witness is telling the truth.

You can look at the witness and decide the motive of the witness in testifying, the interest the witness has in testifying. Does his testimony convince you as having the ring of truth? Does he respond to the questions asked in a manner that has the ring of truth? Does he understand the questions asked? Is his demeanor on the stand one that is truthful and one that gives you the semblance of truth and also, when he is speaking, is he telling you something that he wants you to believe rather than something truthful?

These are the essentials you weigh and you do that by using your common sense. You don't leave your common sense outside the courtroom.

The Government will proceed with the case and

bring on its witnesses. There will be cross examination and I will tell you this: Questions in and of themselves, are not evidence in the case. It is the answers that are evidence and you should listen very attentively to the answers given because each answer given to a question eventually will lead you to determine the issues in the case because that will frame the issue for you. If you had a picture frame with four sides and you put all the evidence inside the frame you would have a complete picture.

Cross examination is usually done by the person not calling the party as a witness and that is a person who, after direct examination -- when the Government examines first, that is direct examination and the defense attorney then examines the witness and that is cross examination for the purpose of determining whether or not they can elicit other information from the witness and you should listen very attentively to the cross examination.

There are times when the attorneys may ask for a side bar and that is, as you have noticed, when we come to the side of the bench and the stenographer is present taking down, in this type of

proceeding, all statements made by the Court or lawyers, as well as the witnesses, during the proceeding itself.

Now, the purpose of the side bar is not for the purpose of keeping information or evidence from you but there are times when there is doubt as to whether or not certain matters should come before you and the Court makes the ruling outside your presence at the side of the bench itself.

You are to draw no inference or conclusions from that. We are not trying to withhold anything from you.

Also, at times, the lawyers will make objections and the Court will sustain or overrule the objections and-those of you who have sat on a jury before, if I say "Objection sustained" it means a question cannot be answered and then there is nothing for you to decide relative to that question. If I overrule the objection, then the question can be answered.

In addition to that, we will probably have documentary evidence, documents marked in evidence, pieces of paper or other type material.

Only items marked in evidence may be submitted

to you for your examination. If a piece of paper is marked for identification only, you cannot see it now can the Court. That is merely to keep the record straight that such paper was presented in court although not for purposes of the jury determining what weight to give it as far as the evidence in the case is concerned.

These are essentially simple rules and if you keep them in mind, regarding the conduct of the trial and the duties imposed upon you as jurors, especially with reference to witnesses and evidence, you will have no difficulty at the end of the case in coming to a conclusion and it goes without saying we selected twelve jurors with two alternates for one purpose -- to listen to the facts in this case and the law as the Court will give it to you at the end of the case and for you to make a conclusion and determination.

We did not select you to come to court and listen to a story and say "We can't decide it."

Only if in your good conscience and the understanding of the facts and the law as the Court gives it to you and if you are convinced your position is absolutely right, then and only then, should

you not abdicate or compromise your position. Otherwise, communicate amongst yourselves and find out what your fellow jurors think about the facts in the case but that should not be done until all the evidence is in and the Court has charged you and I have asked you to deliberate.

At no time during the proceeding must or should you discuss the case among yourselves or with anyone else.

I know if you are married, perhaps your spouse will ask you "What did you do today" and perhaps by inadvertence you will blurt it out. But that is not fair nor is it impartial.

You must promise me now that at no time, even if I should neglect to give the admonition, at no time will you discuss the case among yourselves during the trial nor make up your minds during the trial nor will you go outside this courtroom and discuss it with anyone else.

The only time you are to come to a conclusion and discuss the case among yourselves is when you have discussion in accordance with your deliberations at the end of the case.

Mr. Kaplan?

MR. KAPLAN: May it please the Court, Mr. Santangelo, Mr. Sletnick and ladies and gentlemen of the jury:

As you have heard, my name is Kenneth Kaplan and I am an assistant United States Attorney assigned to prosecute this case.

It is my responsibility and privilege to present the evidence and argue this case on behalf of the United States Government.

Now, before the evidence is presented in this case, the assistant United States Attorney is afforded an opportunity of giving an opening statement.

Now, this opening statement is a brief and general outline of the Government's case and the evidence to follow. As such, it is an opportunity for me to advise you, the jurors, of what the Government intends to prove as to the charges filed against the defendants in this case.

Now, the Court has advised you that there is an indictment filed in this case.

I will read the indictment to you.

United States of America against Pedro Russell and Ramon Bruzon, defendants.

The Grand Jury charges: Count One: On or

about the 25 day of May, 1972, within the Eastern District of New York, the defendant Pedro Morell and the defendant Ramon Ruzson, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to distribute a quantity of cocaine hydrochloride, a Schedule II narcotic drug controlled substance in violation of Section 841(a)(1), Title 21, United States Code and Title 21, United States Code, Section 846.

These are the relevant codes.

Count Two: On or about the 24th day of May, 1972, within the Eastern District of New York, the defendant Pedro Morell and the defendant Ramon Ruzson, did possess, with intent to distribute approximately 3,867 grams, net weight, of cocaine hydrochloride, a Schedule II narcotic drug controlled substance in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2, the aiding and abetting section.

MR. SLOTNICK: It should say, "The 25 day of May, 1972." I believe Government counsel misstated the date.

MR. KAPLAN: Thank you.

As your Honor told you, an indictment is

merely a charge, an accusation, not evidence. Evidence comes from that stand and documents and stipulations entered into and offered into evidence.

You might say, "How is the Government going to prove its case?" The main witness is Alfredo Valdez and I will tell you a few background words about him.

He was once convicted of a crime, selling cocaine himself, in Florida, or possessing cocaine in Florida, in 1969.

After that time he agreed to cooperate with the Government and he agreed to assist the Government in introducing agents such as Agent McElroy, sitting with me and Agent Scharlatt, who will testify -- he agreed to introduce agents in the narcotics trade.

MR. SLOTNICK: Objection and I request the withdrawal of a juror.

May we have a sidebar?

(Side bar discussion)

MR. SLOTNICK: The fact -- there may be, in truth and in fact, an agreement between Valdez and agents -- the fact that they were to introduce them should not be told to the jury nor should it be binding on my client. It is hearsay and damaging.

MR. SANTANGELO: It goes into prior dealings with Valdez which the Government could not bring on its direct case.

MR. KAPLAN: We have no intention to mention that. It is going to come out that he is a paid informant.

THE COURT: You can tell them he is a paid informant.

MR. SLOTNICK: Yes, but not the rest.

THE COURT: Yes, and he will testify as to what went on.

Motion denied.

(Conclusion of side bar discussion)

(Following held in open court)

MR. KAPLAN: You will learn that Mr. Valdez was a paid informant. He was getting paid for the information and the acts he was doing with respect to his activity with the agents of the Bureau of Narcotics.

By the way, the Bureau of Narcotics and Dangerous Drugs is known as the Drug Enforcement Agency.

Mr. Valdez, in his role as a paid informant, met Pedro Morell and Ramon Bruzon in April, 1972.

He had conversations with them, numerous conversations relative to the purchase of a certain quantity of cocaine that the defendants said they were receiving from South America.

There were numerous meetings between Valdez and the defendants here, Bruzon and Morell.

On many occasions Valdez would go and see the defendants in their premises in Jackson Heights. It was a paint store, not where you sell paint but that the defendants were painters and they kept painting paraphernalia in the store and on numerous occasions Mr. Valdez would go to the store and they would tell him the narcotics had not arrived yet from South America.

One day, Mr. Valdez received a call from one of the defendants that the narcotics had arrived. He met with Mr. Bruzon in a bar and they talked about the price and quantity and quality and then Mr. Bruzon had Mr. Valdez visit Mr. Morell at his house because it will be shown Bruzon and Morell were partners in this cocaine conspiracy.

Valdez met with Morell. They fixed the price and the meeting on the following day was fixed for May 25, 1972.

On May 25, Valdez proceeded to the paint store. The paint store was surveilled by the narcotics agents. They were outside the paint store. You will learn this through Agent Scharlett and you will learn there were negotiations and through a signal, the agents came in and made the arrest of Morell and Brunen and found approximately 4,000 grams of cocaine, which is four kilos of cocaine. In lay terms, a kilo is 2.2 pounds.

So, you will learn that the seizure was made with the defendants present and Ramon Brunen attempted to flee during the course of the arrest.

All that is requested of you as jurors at this time ladies and gentlemen and through the course of this trial, is that you keep a fair and open mind with respect to all the evidence you hear and evaluate it fairly and critically and if this guideline is followed I'm confident justice will be done in this case.

Thank you very much.

(continued on next page)

MR. SLOTNICK: May it please the Court, distinguished and learned colleagues, Mrs. Wainwright and ladies and gentlemen of the jury:

My name is Barry Slotnick and I represent Pedro Morell.

Now, after listening to my learned colleague, you might scratch your head and say "How can he get up here and say anything?"

After all, Mr. Kaplan told you my client partook in some sort of scheme with regard to cocaine; that he is a guilty man; that he dealt with an undercover informer, a paid informer. However, I tell you right now, Mr. Kaplan wasn't there and he doesn't know what happened anymore than I do. He knows what somebody told him, if that comes out to be the testimony on the stand and I know what somebody else told me and as a result of that, I tell you, you will see that Pedro Morell is not guilty of conspiring, possessing or doing anything with regard to cocaine and you will see that the "numerous conversations" and the "many times" Mr. Kaplan talks about, is slightly exaggerated unless the paid informer decides to exaggerate more than he has.

Mr. Kaplan said there are many occasions, numerous conversations, numerous meetings. You will not see this.

My client was on a premises May 25 when federal agents walked in and seized what is in that box (indicating).

Mr. Kaplan and his chemist say it is cocaine so I say, "Fine. I'll stipulate it is cocaine." That was found in the basement. My client was on the first floor.

Really, the only thing to interest you is what happened on May 25.

Pedro Morell is a partner in the company. It is his company, Royal Paint. They have a little portion of the area there where they keep their paints, 90-1931 First Avenue in Elmhurst and you will see what that is about. It is a little store, a long store. There is a door you go down. There is a basement and an apartment or something with doors leading to the outside.

My client is a partner in this paint business and he stored his paints, brushes, materials, his clothes -- you will see from the witness stand.

The next door store owner, Mr. -- fruit and

produce, -- whatever his name is, he stored his materials there and other people had access to that premises and on May 25 my client, standing on the first level, nowhere near where we have that material, is arrested. Naturally, he is arrested. He is on the premises.

I dare say, you, as jurors, and in picking jurors we have done a careful job and selected jurors from the cross section of the community -- you will notice that you are not to leave your common sense behind. That is the greatest thing you have, common sense and experience, so you will know from listening to the testimony where credibility lies and you will hear my client was there for a legal, legitimate purpose. He was finished painting. It was about 4:30, five o'clock and he wasn't anywhere near the substance he was charged with but was upstairs, where he should have been, and you will know by your own common sense that in view of the fact that so many other people had access to that lower level and upper level that my client should not be charged.

Now, let's look at Valdes. I have never seen him or heard of him. I don't know who he is.

Mr. Kaplan said he is a paid informer. Well,

we'll find out because as Judge Costantino told you, the most important thing in this trial, the most important thing you have to listen for and watch for and connect up with, is that ring of truth. Watch that witness stand. Listen to this man's words.

Is he number one, where he inculpates my client, where he really says guilty things about my client? If not, that's the end of that. But, if he does, if he does, think in your mind -- you'll hear he is a paid informant; that he had a narcotics conviction. You will hear why he is testifying. You will wonder, is he a piece worker? Does he get paid on the basis of what he is producing? Is Mr. Morell on trial because he is on the premises? If so, why not a little extra -- because Valdez will tell you that he knew Morell and Bruson were partners in that paint business. Why is Pedro Morell here?

Judge Costantino said several things to you which are important and I ask you, if you listen to no one, not to me or Mr. Kaplan or Mr. Santangelo, then listen to the Judge because he will tell you what the law is and once you put the facts and the

law together Pedro ... cell must walk out of here a free man.

Judge Costantino told you a man's presumed innocent throughout the entire trial.

In other words, if this was a football game or a baseball game, one nothing, my favor, if we stop right now, after Mr. Kaplan's opening speech and I said "I withdraw everything I said" you would have to acquit or the Judge would so direct you because the law says, "one nothing, my favor" throughout the entire trial.

The Judge told you that the defendant does not have to do anything. I don't have to open. Mr. Kaplan indicated to you he would open. He must. I must do nothing. My learned colleague, Mr. Santangelo must do nothing and perhaps he won't.

Judge Costantino told you that a defendant has an absolute right not to take the witness stand and has an absolute right to do nothing and that one nothing score remains because that presumption of innocence stays with him.

I am arguing innocence, not reasonable doubt and I say that you will see from that witness stand that my client was in the wrong place -- for him,

the right place at that time -- but in view of law enforcement, in the wrong place.

Valdez, the paid informer -- you decide. Don't close your mind because a lawyer made a speech saying something or another, because a lawyer made a speech telling you that his client wasn't on the floor with that material and another lawyer made a speech which really doesn't mean anything saying that his client is innocent. Decide from the evidence from the witness stand and if you make up your mind after all the evidence is in, you stick to it, if you are sure of it yourself.

As the Judge said, the defendant's life and liberty is at stake and that is a burden you have undertaken not very lightly, at least not so far as Pedro Morell goes.

One of the first things the Judge said in the beginning -- "Is there anybody here who feels where there is smoke there is fire," etc., etc. My client has been indicted. This is a copy of what the indictment looks like (indicating) and that is merely an accusation. That means that somebody is charging my client of doing something and I tell you, this is merely a charge and in that

charge I represent one man, not two, three or four but one man, Pedro Morell and he is being charged.

This piece of paper has taken a piece of his life, right here.

Unreasonable doubt, I won't go into that.

I suggest that from what I understand Mr. Kaplan has told you, that it is his understanding that we'll have a witness, one witness by the name of Valdez who will obviously point some sort of finger at my client. I want to see how much of a finger is going to point because Mr. Kaplan said "numerous conversations, numerous meetings, many occasions."

I want to see that and I'll test that. It is called cross examination.

There will be more that I will say to you at the end. This is just the beginning.

All I can do is really impress upon you the fact that we must have an open mind; that all the speeches in the world mean nothing.

If the greatest speakers came to address you, it would have no effect because if you have one thought you must vote Pedro Morell guilty at this point, then you have taken your oath in vain.

Listen to the evidence and remember that he is presumed to be innocent and that presumption remains with him throughout the trial.

See if he is not just an unfortunate man who, although in the wrong place at the wrong time, had a right to be there. He kept his materials there and other people kept their materials there and somewhere, on another floor, these materials were found and you will see my client had no knowing possession or that he was actually involved with cocaine and I will come back and look each of you in the eye and say, "Remember what I said? Mr. Kaplan made a nice speech. He wasn't there and neither was I. Now, we have all been there" and I will look you in the eye and ask you to acquit because my client is a victim of unfortunate circumstances and not a guilty man.

Thank you.

(continued on next page)

MR. SANTANGELO: Your Honor, ladies and gentlemen of the jury, Mr. Kaplan, Mr. Sletnick:

Both Mr. Kaplan and Mr. Sletnick have outlined basically to you, what will be shown in this case.

I rise at this time not because I have to but because I want to remind you of a few things as to what the Judge said and Mr. Kaplan said.

The Judge said "Take notice of the witness and ask whether the witness is telling you the truth because it is the truth or because it is something he wants you to believe."

You will see Alfredo Valdez. You will listen to him and I ask you to ask that question while he is testifying.

Is he testifying about Ramon Bruson because it is something he wants you to believe? There are three questions to ask in order to answer that one: Would he testify that way if it weren't true? Could he testify that way if it weren't true and finally, did he testify that way if it weren't true?

You look him in the eye and at the end of the case I will come back and I will ask you -- I will look you in the eye and ask you -- would

Alfredo Valdez lie? Could he lie and did he lie? For, if he did -- and you judge that -- you look at him -- you must acquit.

Things change quickly in a courtroom and to give you an example, you will remember Mr. Kaplan describing Mr. Valdez as a person, the latter his conviction agreed to cooperate. That was his description. About two minutes later he changed the description --

MR. KAPLAN: Objection.

THE COURT: That is unfair comment.

MR. SANTANGELO: (continuing) He added that Mr. Valdez was a paid informant.

I say to you there is a grave difference between someone who agrees to cooperate and someone who is withholding his cooperation with the Government for money.

MR. KAPLAN: Objection. There is no evidence of that.

THE COURT: There is no such evidence at this point.

MR. SANTANGELO: (continuing) You will see evidence that Mr. Bruzon was in the paint store and that he had a right to be in the paint store and he

was a painter for so many stores and he stored his paints, ladders and clothes there and that other people had access to that store, both to the top floor and to the bottom flerr and I ask you, taking all of this into consideration, taking the motive of Valdes to lie into consideration, taking his demeanor on the witness stand and taking all the evidence that the Government has, I ask you to put it together; ask the questions I asked you to ask. Remind yourselves of them as the witnesses testify and I'm sure when I come back to you after the case is over and I ask you those three questions; would he, could he and did he, you will come back with a verdict of not guilty.

Thank you.

(continued on next page)

THE COURT: Let's take the first witness.

MR. KAPLAN: It is Mr. Valdez, your Honor.

THE COURT: All right.

Step up.

THE CLERK: Raise your right hand.

A L F R E D O V A L D E Z, having been first duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: State your name, sir.

THE WITNESS: Alfredo Valdez, V-a-l-d-e-z.

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Now, Mr. Valdez, I want you to talk clearly and loudly directing your voice toward me, toward the back of the courtroom so all the jurors can hear. Will you do that?

A Yes.

Q Where do you now live?

A Central America.

Q Try to speak slower.

When did you leave the United States?

A I believe in 1973, July.

(continued on next page)

Q Did you live here before July, 1973?

A Yes.

Q Where did you live?

A New York City and Brooklyn.

Q For how many years did you live in the New York area?

A Since 1962.

Q Now, sir, were you ever convicted of a crime?

A Yes.

Q When was that?

A 1969 in Miami.

Q Can you tell us what you were convicted of?

A I got possession.

Q Of what?

A Cocaine.

Q What was the outcome of that case?

A Excuse me, sir?

Q The outcome of the case; what happened because of the case?

A What happened with the case that I got possession, that I got two years probation.

Q Now, can you tell us after you were sentenced, did you do anything with respect to the Bureau of Narcotics and Dangerous Drugs?

A Yes, I work. I cooperate.

Q What do you mean by "cooperate"?

A Cooperate and hopp that to the Bureau of Narcotics --

Q What specifically did you do?

A Look for people who is in business selling drugs.

MR. SLOTNICK: Objection. I ask that be stricken.

THE COURT: Yes. I will strike that.

Q Did you have another job at that time?

A Yes, attendant in a garage parking lot.

Q What job do you have in Central America?

A Cabinets for the kitchen on construction.

Q You are a carpenter?

A Yes.

Q While working with the Bureau of Narcotics, did you work with specific agents?

A Yes.

MR. SLOTNICK: Objection.

Let's discuss this case.

THE COURT: I will allow some preliminary questions.

Q What agents?

A Agent Gene McElroy.

Q Agent McElroy, sitting here (indicating)?

A Yes.

Q Now, can you tell us, were you getting paid for some of your activity in working with Agent McElroy?

A Yes.

Q How would you be paid?

A Oh, paid on a case.

Q Tell us generally how you would be paid.

MR. SLOTNICK: Objection to the generality.

THE COURT: Yes.

"How did you get paid?"

Q How did you get paid?

A Get a big case, big people.

I got spending money, a couple of bucks extra I needed.

Q How much would you get?

A All depends on the case.

Q Well, can you tell us if you know individuals by the name of Pedro Morell and Ramon Bruzon?

A Yes.

Q Do you see them in the courtroom?

A Yes.

Q Can you point them out?

A Yes.

Q Can you tell us which is Ramon and which is Pedro?

A Yes.

Q Tell us.

A That is Pedro and that is Ramon.

MR. KAPLAN: May the record indicate he identified the defendants.

Q When did you first meet Pedro Morell and Ramon Bruzon?

A I believe it was April, 1972.

Q What were the circumstances of the meeting with the defendants?

A That a fellow named Louis introduced them to me.

Q Where did the introduction take place?

A In the street.

Q What borough?

A I believe some part in Queens.

Q In Queens?

A Yes.

Q Did you have a conversation with the defendants at that time?

A Yes.

Q And can you tell us what you said to them and what they said to you?

MR. SLOTNICK: Objection, your Honor.

THE COURT: I will allow it.

Q What did you say to Pedro and Ramon and what did Pedro and Ramon say to you?

A I speak both about having something, cocaine and he say he don't have nothing at the moment but he expected a shipment.

Q You have to speak slower and articulate more.

A He say he don't have nothing at the moment but he expect a shipment from Colombia; ten ky.

Q Who did you speak to?

A Both.

Q Both Pedro and Ramon were talking to you at this time?

A Yes.

Q When you say ten ky, would you explain that term?

A Each ky is over two pounds.

Q What is the regular name of a ky?

A The regular name?

Q Is there a larger name?

A That is the name.

Q Do they use kilo or kilogram?

A Yes, in Spanish language.

Q What does that mean?

A Over two pounds of cocaine.

Q Were these conversations taking place in Spanish?

A Yes.

Q You said each ky is approximately two pounds?

A Yes.

Q How many kys did they say they could provide?

A Ten.

MR. SLOTNICK: Objection.

THE COURT: He told us already.

MR. SLOTNICK: It is repetitive.

Q Did you have further conversations at that time about the ten kys?

A Yes.

Q What was the nature of that conversation?

A I started a conversation when that guy introduced me and he don't know the date it would come. He expected it very soon. I asked the price and he don't know.

Q Which of the defendants was talking?

A I can't speak to both the same time; sometimes to Ramon and sometimes Pedro.;

Q They were both there, in other words?

A Yes.

Q And both were talking about the arrival of the kys?

A Yes.

Q What other conversations did you have at that time?

A About the ten ky and he say he expect it soon so I gave him my phone number.

Q Where were you living at that time?

A Queens.

Q Did they give you anything in return?

A He gave me the address. He give me a card. He give me the store address in Queens.

Q When you say "he" who was it?

A Both, but Ramon give me the address.

Q Did they tell you anything about themselves at that time, what they did, Ramon and Pedro, at that initial meeting?

MR. SLOTNICK: Who said what to who?

THE COURT: He said he can't specifically say.

MR. SLOTNICK: Well, let him try.

Q When you had the conversation with Pedro and Ramon did either of those make comments about what business they were in other --

A He is in the paint business.

Q Do you remember who said this?

A Both, yes.

Q You said they gave you a card?

A A card and address to a store, 31st between 90th and 95th in Jackson Heights.

Q Did they tell you anything else at that time?

A They said -- and he call my house one day, that he got the merchandise.

Q Let's go slower.

Did you meet with the defendant on certain occasions?

A Yes.

Q Where did the meetings take place?

A I meet in the store a couple of times.

Q How many times would you say?

A Maybe four or five.

Q You went to the store?

A Yes.

Q Who did you see when you got to the store on each occasion?

A Both.

Q Pedro and Ramon?

A Yes.

Q On each occasion did you have a conversation with both of them?

A Yes.

Q Tell us the nature and substance of those conversations.

MR. SLOTNICK: Objection to the form of the question unless we know where it was who said what and when it was.

THE COURT: Yes.

At any event, we are going to recess.

Do you have to go some place?

MR. SLOTNICK: Yes, for about a half-hour.

THE COURT: Come back at 2:30.

One of the attorneys has another judge to see and I am permitting him to do so.

(Luncheon recess.)

(After luncheon recess.)

THE COURT: Bring in the jury.

MR. SANTANGELO: Your Honor, I have served a copy of my requests to charge to the Government.

MR. KAPLAN: So have I, your Honor.

MR. SLOTNICK: And I have received a copy, your Honor.

(Jury entered jury box.)

A L F R E D O V A L D E Z , having been previously duly sworn by the Clerk of the Court, resumed the witness stand and further testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN (Cont.)

Q Let's resume, Mr. Valdez, where we were this morning.

After you had the conversation with Pedro Morell and Ramon Bruzon --

MR. SLOTNICK: I object to the summation.

Let him have the last question and answer read back.

MR. KAPLAN: It was just preliminary.

Q At the end of the conversation on the street corner what, if anything, did Morell or Bruzon say to you?

A I speak to Pedro and Ramon on that day about

the cocaine; if he has got something for me and he say, "I have nothing at the moment" but he is going to expect the shipment coming in soon about the 10 ky of cocaine and I ask for the price. He said nothing. He didn't know yet.

Q When you say "he" --

A Ramon and Pedro.

Q They were both talking?

A Yes.

Q What were your parting words at the end of the conversation or when were you to meet them the next time?

A The next time -- I give him phone number to my apartment -- to Ramon -- and I speak to Pedro, too, and then they give me the address to the store.

MR. SLOTNICK: Could we have who said what and the conversation; the words as best he recalls.

Q Do you recall who said what; Pedro or Ramon?

A I can't remember which one.

Q Were they both talking?

A Yes.

MR. SLOTNICK: I ask that Mr. Kaplan not have a conversation with the witness and that he not lead.

Q This was when, if you recall?

A In April.

Q When in April, if you can recall? This is 1972

we are talking about?

A Yes.

Q In the early part of the month, middle of the month, late in the month?

A I think the end of the month or something like that.

Q Was anything said about your visit to the store?

A Yes.

I spoke to both, first Ramon and after that Pedro and they say and if you cannot find it, so he give me like a little business card.

MR. SANTANGELO: Is this a different conversation?

MR. KAPLAN: The end of the original conversation.

Q Do you recall who gave you the business card?

A I don't remember but I think it was Ramon.

Q Did the business card contain the address of the store?

A Yes.

Q Can you tell us if you contacted them at another or later time?

A Yes.

Q And did they ask you to contact them or did you just contact them?

A Yes.

Pedro and Ramon, he say "You have to contact with me in my store between 4:00 and 6:00 o'clock." That is the time I was over there.

MR. SANTANGELO: May we have who said what?

THE COURT: He said Pedro.

MR. SANTANGELO: I thought he said Pedro or Ramon.

THE COURT: He is not sure.

Q Do you recall, during the early part of the conversation, if it was Pedro or Ramon?

A Both. Always, I speak to both.

Q And were you speaking Spanish?

A Yes.

Q When did you next see Pedro and Ramon after the initial meeting with them?

A I can't remember exactly the date but I think a couple of days after I stopped in the place, the store.

Q Did you have a conversation with --

A I have a conversation with Pedro and Ramon about something came in, the cocaine and he said, "Not yet, but I expect it soon."

Q When you went to the store, describe to the jury what type of premises was this?

A It was a house. It has in the front a little

business, a fruit business, I think.

It got a little door to the basement and a small apartment.

Q When you went to see Pedro and Ramon where did you see them?

MR. SLOTNICK: When?

Q This initial meeting at the store --

A Yes --

Q (Continuing) Where did you see them, in the front or back of the store?

A Sometimes I saw Ramon and Pedro on the ground floor of the store and other times downstairs.

MR. SLOTNICK: He says "sometimes." May we establish about when?

Q The first time you went there?

A The first time I saw Pedro in the store.

Q How long did this little conversation last between you, Pedro and Ramon?

MR. SANTANGELO: Objection.

The testimony is he saw Pedro the first time.

Q The first time that you went to the store did you see Pedro?

A I saw Pedro, yes.

Q And did you see Ramon?

A Yes.

Q Did you talk with both of them?

A Yes.

Q What was the conversation you had with both of them?

A I speak to both of them about cocaine, if it is coming in yet. They say "No, but I expect it soon."

Q Did you have more conversations with one of the two than the other?

A I speak to both at the same time.

Q Did one talk first and the other second?

A Yes.

MR. SLOTNICK: Objection. He is leading.

THE COURT: It is not leading.

Q Who spoke first?

A Pedro and then Ramon.

Q Was there any other individual present during the course of this conversation?

A No.

Q Did you see any other individual in the store?

A No.

Q How many times did you come back to the store and have these conversations?

A I cannot remember exactly but I believe about

four or five times.

Q Over what period of time did you come to the store and have these conversations?

A Excuse me?

Q Well, you had these conversations in a period of time?

A Yes.

Q In other words --

MR. SANTANGELO: May we approach the side bar?

THE COURT: What for? There is not even a question.

MR. SANTANGELO: I believe there is a witness in the courtroom.

MR. KAPLAN: Agent Scharlatt, but he won't testify to this.

If you want him excluded --

MR. SANTANGELO: May I have him excluded?

THE COURT: All witnesses are excluded except the agent on the case.

(Whereupon, Agent Scharlatt exited the courtroom.)

Q When you had these meetings were they within a period of days, weeks or months or what? How often would you go there, in other words?

A About four or five days between one appointment

to theother one.

Q Every four or five days would you go over there?

A Yes.

Q Would you speak to anyone else other than --

MR. KAPLAN: Withdrawn.

Q Were you contact with anyone other than Ramon and Pedro at this time?

A Agent Gene McElroy.

Q How often would you speak to Agent McElroy about these meetings?

A I cannot understand that.

Q Well, how many timeswould you speak to Agent McElroy about the meetings?

A All the time when I speak to the people.

Q You would speak to Agent McElroy?

A Yes.

Q Now, when you went and saw Pedro and Ramon in the store -- by the way, did you ever see them other than in the store? Every time you went there in the four or five meetings it was in the store?

A Yes.

Q Were there persons other than Ramon and Pedro in the store?

A No.

Q Each time, can you tell us what the substance or nature of the conversation was between yourself and Pedro and Ramon?

MR. SLOTNICK: Objection to substance and nature. Who said what to whom and what did they say?

A When I go to the store I speak to Pedro and Ramon about the cocaine; how long I have to wait, and Ramon and Pedro said, "You have to wait. I expect it is coming soon."

Q Did they tell you how much they were expecting?

A About ten ky.

Q Did you say how much you wanted to buy?

A I said I wanted to buy everything and he said he had to give some to somebody else.

Q Who said that?

A At that time I speak to both. I can't remember if it was Ramon or Pedro.

Q At these conversations were Pedro and Ramon always present with you?

A Yes.

Q And both side by side or in the same room; is that correct?

A Yes.

Q Did there come a time when you heard from Pedro

and Ramon?

A Excuse me?

Q Did there come a time when you were called or you heard from them or were contacted by them?

A Well, I believe at that time Ramon, he called to my house.

Q Ramon?

A Yes.

Q Did he have your number previously?

A He got my phone before.

(continued next page)

Q When you say he called your house, how do you know it was Ramon that called?

A When I pick up the phone and I say, "Who is speaking?" he say, "Ramon."

He say, "Al, Friday. I got the paint for you."

I say, "How many gallons?"

He say, "A few."

I ask the price.

He say, "The gallon is twelve fifty but I don't want to speak any more on the phone. I want to see you."

Q Who was that?

A Ramon.

Q Who mentioned that there was paint?

A Ramon.

Q And what did you understand by the term gallons?

MR. SANTANGELO: Objection.

THE COURT: Objection sustained.

MR. KAPLAN: I will withdraw it.

Q Was there a price discussed over the phone at that time?

A He said it was twelve fifty. That is twelve thousand --

MR. SLOTNICK: Objection.

THE COURT: I didn't hear it.

MR. SLOTNICK: He said twelve fifty and then he was about to conclude --

THE COURT: What do you mean?

THE WITNESS: He said 12,500.

THE COURT: What did he say to you?

THE WITNESS: Twelve fifty.

THE COURT: Then that is all he can say.

Q Did he want to meet you?

A Yes.

Q Where?

A The day after in a bar --

MR. SANTANGELO: Objection, your Honor.

Let him ask for what was said.

THE COURT: That's all right. Go ahead.

Q Do you recall the date of the phone conversation?

A I can't remember.

Q How many days?

A A few days before the arrest.

Q Before the arrest?

A Yes.

Q Would it be fair to say it was on May 23rd --

MR. SANTANGELO: Objection.

THE COURT: Your Honor can take judicial notice

of the day of the arrest.

THE COURT: If that is the day of the arrest, all right.

Q What did he say with respect to meeting you at any particular place?

A He didn't want to speak to me on the phone but in person.

Q Where did he tell you to meet him?

A In a bar.

Q Did he set a time?

A 10:00 o'clock in the night.

Q Where was the bar?

A Between 37th Avenue and 85th St.

Q What was the name of the bar?

A Escorial.

Q Escorial. Was that a bar with Spanish clientele?

A Yes.

Q Did you meet him at the bar?

A Yes.

Q Do you recall the time?

A I believe around -- he come in late, around 11:00 o'clock.

Q Who was present?

A I remember he come with two guys more but I don't

spoke to the other guy.

Q Did you have a conversation?

A I had a conversation with him.

Q When you say "him," who were you having the conversation with?

A Me and Ramon.

Q Ramon Bruzon?

A Yes.

Q Was the conversation with anybody else or in private?

A In private.

Q Where?

A At the counter of the bar.

Q What did he say to you and what did you say to him?

A I spoke to him. How many ky he have for me. He said, "Four ky and the price around 12,500." And I say to him, "That's a high price for quantity."

Q For what?

A For four ky, for the quantity.

Q What did he say in response to that?

A I spoke to him for a few minutes more and he said, "I will give you a break. $12,000 each ky. If you want four, there is about 48 grand thol but you have to speak to my pal, Pedro. If it is okay with him then it is okay

with me, too."

MR. SLOTNICK: I object to conversations had not in the presence of my client as being not binding upon him.

THE COURT: Yes, it is not binding upon your client at this time.

Q Did you have other conversations about price?

A I say "We go see Pedro."

He gave me the address to Pedro's home and then I went to my apartment house and called Gene McElroy that I explained to him everything what happened in this bag.

MR. SLOTNICK: Objection.

THE COURT: You can't tell us what you explained.

MR. SLOTNICK: I move to strike.

THE COURT: Strike it.

Q As a result of your conversations with Gene McElroy what did you do?

A He said to me --

MR. SANTANGELO: Objection.

THE COURT: What did you do?

THE WITNESS: I went to Pedro's house.

Q Where was that?

A In Astoria some place, I believe-

Q When you got to Pedro's house --

A I went to the apartment.

Q When you got to Pedro's house, what time was it?

A I believe around 1:00 o'clock.

Q In the morning or afternoon?

A 1:00 o'clock in the morning.

Q That would be on May 24 or May 25th?

A I believe that is the date of the arrest.

Q In the early morning hours of the day of the arrest?

A Yes.

Q Did you have a meeting at that time with Pedro Morell?

A I spoke to him for a few minutes about my conversation with Ramon in the bar; that he had a full ky.

He gave me the price of $12,000 and he said if it's all right with him and Pedro said, "Yes."

So, I make a deal for the afternoon.

Q Did Pedro say anything about the quality of the cocaine?

A I asked for the quality and he says, "Good."

MR. SLOTNICK: I object to Mr. Kaplan's leading the witness.

Q What, if anything else, was said at that time?

A Well, I spoke to him, I would say, a few minutes

and he told me that he go to do the business between four and six o'clock in the store.

Q To do what?

A The cocaine business.

Q Did he tell you where to go and where to meet him and what to do?

A Yes.

Q What did he say?

A He told me to go to the store between four to six, 35th between 90th and 95th.

Q Four to six in the morning or afternoon?

A Afternoon.

Q You are talking to him at one o'clock in the morning?

A Yes.

Q Did you have any other conversations with Pedro at that time?

A No.

Q What did you then do or where did you go?

A I went to my house and it was too late to call the agent so early in the morning I call him up.

Q Who?

A Gene McElroy.

Q Did you have a conversation with Gene McElroy?

A Yes. I have a conversation about --

MR. SANTANGELO: Objection, your Honor.

THE COURT: Don't tell us the conversation.

Q As a result of the conversation did you do anything or did anything happen?

MR. SLOTNICK: Objection as to the results.

THE COURT: No, that's all right. There is nothing wrong with that.

A Gene McElroy come to my house around 2:00 o'clock.

Q And what, if anything, did you and Gene McElroy do?

A First, he search me and the house and started to ask questions --

Q Was Gene McElroy with other agents?

A With another agent.

Q He searched you?

A Yes.

Q And what else?

A The house.

Q And what else did he search? Did he search anything else?

A I forgot, yes, he searched my car, too.

Q When?

A I believe later on when we went to the place,

the store.

Q Did you have other meetings with Gene McElroy in the afternoon?

A Yes.

Q Where were those meetings?

A The restaurant. We had a lunch with the group.

Q With Gene McElroy?

A Yes.

Q Did you have other meetings with him?

A Yes.

Q When?

A Around 2:00 o'clock.

Q Where did you meet with him at that time?

A The other group?

Q The other group, you mean some of the other agents became involved?

A Yes.

Q What happened when you met the other group?

A He prepared the plan, what I have to do; put the money in a suitcase in the trunk of my car and I explained to him I don't know the business he is going to do with the cocaine, where; in the basement, back of the store or the apartment.

Q What type of suitcase was that?

A A black suitcase.

Q What, if anything else, did you do at that time?

A I get in my car. I believe that was around 4:00 o'clock. I stopped in front of the place and went into the store. I knock at the door --

Q When you say "the store," what place are we talking about?

A The store with Ramon and Pedro.

Q The same place you visited many times?

A Yes.

Q What happened?

A I knock on the door and Pedro open the door.

Q Did you have a conversation with him?

A I get in and said to Pedro, "Where is Ramon?" and he said, "Come with me, downstairs in the basement."

Downstairs in the basement I see Ramon. He is working downstairs in the basement with the cocaine.

Q Now, describe to us the store.

You said you walked in and went downstairs. What type of downstairs place was it?

A You get in the store. The door, you got on the left. That is the door to the street.

You enter the store, you got a door in the floor --

Q Like a trap door?

A Yes.

Q Is that what it is?

A Yes.

MR. SLOTNICK: Objection. There is no need to lead.

THE COURT: He does not know the word.

Go ahead.

(continued next page)

Q And you went downstairs?

A I went downstairs, walked to the left and saw Ramon sitting on the floor preparing the cocaine --

MR. SLOTNICK: Objection. That is his conclusion.

THE COURT: He said he saw.

Q What did you see Ramon Bruzon doing on the floor?

A He was preparing the cocaine on the floor.

Q Explain what you mean.

A He mixed something, put a cut in there.

Q Explain what you mean by cut. Do you have an understanding of what it means in the narcotics business to cut cocaine?

A I believe the people cut the cocaine --

MR. SANTANGELO: Objection.

THE COURT: What does it mean to cut cocaine? Tell the jury. What do you know it to mean?

THE WITNESS: Cut the cocaine, put the sugar, dextrose in there to make a little more bigger the package.

Q Were there conversations downstairs between yourself, Pedro and Ramon?

A I speak to Pedro and Ramon.

I say, "Why you do that for the price I pay"?

He say, "The price is cheaper. Have to do it that way. The merchandise is expensive. I have to make my profit."

Q Who said that?

A Both said that.

Q Can you tell us what the final price agreed upon was?

A Excuse me?

Q What was the price you were talking about?

A $12,000 for each kilo.

Q How many kilos?

A Four ky.

Q Did you agree on a final price?

A Forty-eight grand.

Q $48,000?

A Yes.

Q What, if anything, did they say to you and you to them in the downstairs premises?

A I spoke to both and downstairs I said, "Listen, you expecting more merchandise, more cocaine? I got a lot of customers. I want to sell it."

He says, "As soon as it comes cheaper but right now I have only four ky's for you. But I will do more business with you."

MR. KAPLAN: I ask that this document be marked for identification.

THE CLERK: Document marked for identification as Government's Exhibit 1.

(So marked.)

Q Mr. Valdez, I show you what has been marked as Government's Exhibit 1 for identification and I ask you if that picture is a fair and accurate representation of the downstairs premises as you observed them on May 25, 1972 --

MR. SANTANGELO: Objection, your Honor.

THE COURT: Let him tell us what it is.

Is it a fair representation of the place?

Q Look at the picture.

A Yes.

Q Is that the way it appeared on that day?

A Yes.

Q Explain to the jury what all the articles are that you see on that picture?

MR. SANTANGELO: Objection.

THE COURT: Yes. It is not evidence.

MR. KAPLAN: Oh, I am sorry. I will offer it.

(Photograph shown to counsel.)

MR. SANTANGELO: May we have a side bar, your Honor?

THE COURT: Yes.

(Side bar discussion.)

MR. SLOTNICK: In view of the testimony as put forth during the motion to suppress I object, in the interest of justice, because we know that is not a fair and accurate representation of what he saw.

After the agents arrived they executed a hammock and other things were done subsequent to their leaving and I think it prejudices the case.

MR. KAPLAN: It is a matter to be cross-examined on.

MR. SANTANGELO: It shows a floor --

THE COURT: He identified it.

MR. SLOTNICK: There is alleged cocaine scrambled around --

MR. KAPLAN: It is a matter of credibility, whether he saw it or not.

THE COURT: He says it is a fair representation of what he saw when he went down there.

(Conclusion of side bar discussion.)

(Following held in open court.)

THE COURT: Mark it.

THE CLERK: Government's Exhibit 1 previously marked for identification now marked in evidence.

(So marked.)

Q I show you what has been marked as Government's Exhibit 1 in evidence and I ask you to explain to the jury what you observed as depicted in this picture; the various objects?

A That is cocaine, a bag over here on the floor--

THE COURT: If he says that is the cocaine tell him to mark it with a "c."

Can you put a "c" on it?

THE WITNESS: Put a what?

Q Put a "c" wherever you see the cocaine.

No. Not s-i-c.

THE COURT: A plain "C" like in cat.

Q And anywhere else where you see it.

Put a "C-u-t" for cut.

THE COURT: No.

What does that mean?

THE WITNESS: That is when you put something inside the cocaine.

THE COURT: But what is it?

THE WITNESS: I don't know what it is now.

THE COURT: Just put an "x" there.

Q Where else is the cocaine in the picture?

A (Indicating)

Q Are there any small packages of cocaine around

there?

MR. SLOTNICK: Is Mr. Kaplan going to lead him? He is saying "Is that this" and "Is that there?" That is unfair. Let the witness testify.

THE COURT: He is.

MR. SANTANGELO: I can't hear the witness.

MR. KAPLAN: I am not talking to him.

Q Would you please just mark the package "c"?

THE COURT: Just mark it by letters. Mark what you see.

Is there a bottle some place?

THE WITNESS: Yes.

THE COURT: Mark it with a "b." Mark whatever you see with the first letter of what it is.

(Witness complies.)

MR. KAPLAN: May I show it to the jury?

THE COURT: We will get around to it.

Q How long were you in the store with Pedro and Ramon?

A I believe more than half an hour.

Q During that course of time what were you doing with Pedro and Ramon? What was going on between the three of you?

A I wait for Ramon to finish what he is doing.

Q What do you mean?

A Mixing the cocaine.

THE COURT: Were you watching him do this? Were you there when he was doing it?

THE WITNESS: Yes.

Q How long did this procedure take?

A I believe about ten minutes.

Q Were you having conversations at this time?

A The kind of conversations I had before.

I started to speak to him; "Do you expect a shipment? How much a week?"

Q Did you say anything else with respect to the cut?

MR. SLOTNICK: Objection to the leading.

THE COURT: It is a question.

A I say "Why on cut?" --

Q Slowly. Explain this to the jury.

A I ask "Why you cut that cocaine?"

MR. SLOTNICK: Objection and I move to strike it. It has been asked and answered. There is no point in repeating it.

THE COURT: I haven't heard this.

Q Explain it.

A I ask Pedro and Ramon, "Why cut the cocaine?

I paid the right price."

He said, "That costs more money."

MR. SLOTNICK: I didn't hear the witness.

Q Identify the speakers.

A I speak to both and I say, "Why you have to cut cut the cocaine" and both told me he have to do it.

"The reason is we have to make a profit."

He said the price he paid is too high.

He said, "You want it?"

Q When he said, "The price he paid" who was speaking?

A I said, both.

Q You are not sure if it was Pedro or Ramon?

A No, sir.

Q Then what happened?

A So, I stay a little longer there and when they finish I said to Pedro, "I go get the money in the trunk of the car" and Pedro tell me he would come with me.

Q Did he say this or did he come with you?

A Pedro say "You got the money?"

I said, "Yes, in the trunk of the car."

He opened the door to the stone, went behind me to the trunk. I open it. Take the suitcase --

Q Hold on.

You and Pedro are walking upstairs?

A Walking upstairs.

Q Where is Ramon at this time?

A Downstairs.

Q You walked outside the door?

A Yes, I walk with Pedro.

Q What happened?

A Pedro open the door to the store and he walk with me to the car.

I open the trunk to the car. That is the signal for the agent. We wait outside. When he see me open the trunk that means the business is on in the store.

Q What was the signal?

A That was the first signal.

Q Opening the trunk?

A Yes, open the trunk means the merchandise in the store.

Q What happened when you opened the trunk and took out the suitcase?

A I walked with Pedro to the store and at that moment, all agents to push me to the wall and when it is said, "God damn it" that means the cocaine in the basement.

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DIRECT EXAMINATION

BY MR. KAPLAN: (Cont.)

Q Who said God damn it?

A Me.

Q What was that signal supposed to do?

A He know the merchandise is downstairs in the basement.

Q At that time what if anything did you observe?

A I saw the agent walk downstairs and he put me close to the wall, me and Pedro.

MR. KAPLAN: At this time I ask to show the picture to the jury.

(Photograph passed to jurors.)

Q When you went outside to the -- to get the suitcase and open the trunk of the car, where was Pedro?

MR. SLOTNICK: Objection. Asked and answered.

THE COURT: He said, with him.

Q Outside the store?

A Yes.

Q Now Mr. Valdez, can you tell us, are there any pending charges against you at the present time?

A No.

Q Were there pending charges against you at the time of the incident?

A No sir.

Q Were there any threats or promises made regarding your testifying here today?

A No sir.

MR. KAPLAN: Nothing further.

THE COURT: Mr. Slotnick, you may cross-examine.

CROSS-EXAMINATION

BY MR. SLOTNICK:

Q Mr. Valdez, where were you born?

A Cuba.

Q What year did you come to the United States?

A 1962.

Q In what year were you caught trafficking in cocaine?

MR. KAPLAN: I object to the characterization "trafficking."

He admitted he was convicted --

MR. SLOTNICK: Your Honor --

MR. KAPLAN: That is a characterization --

MR. SLOTNICK: If I had a report indicating something about his arrest I wouldn't use that term.

Q What year were you caught trafficking in cocaine?

A 1969.

Q When did you first start trafficking in cocaine?

MR. KAPLAN: Objection.

Q When did you first start dealing in cocaine?

A I got a possession for one key.

Q That is when you were caught in 1969.

Before 1969 -- this was the first deal you ever had?

A Yes.

Q And the first deal you had you were caught?

A Yes.

Q You never dealt in cocaine before that?

A No.

Q As a result of being caught, did you go to trial before a judge like Mr. Morell is doing or did you plead guilty?

A I pled guilty.

Q Before you pled guilty did you speak to an agent or United States Attorney?

A No.

Q You never spoke to an agent or United States Attorney before you pled guilty?

A After that?

Q Before?

A No.

Q Did you have a lawyer?

A Yes sir.

Q And after you pled guilty you were sentenced, correct, to three years probation?

A Yes sir.

Q And after you were sentenced to three years probation did you continue dealing in cocaine?

A I never dealt in cocaine.

Q What was the Florida arrest about?

A That's what it was.

I only deal when I work for the agent.

Q When did you begin working for the agent?

A 1970. January.

Q January, 1970 after you pled guilty; is that correct?

A Excuse me?

Q Is that after you pled guilty or before you pled guilty?

A I can't remember that.

Q Let's go back.

When were you arrested in 1969?

A December.

Q December of 1969?

A Yes.

Q And you were arrested in Florida; is that correct?

A Yes.

Q Was that a federal or state arrest?

A A federal arrest.

Q A federal arrest?

A Yes.

Q And in 1970 you began working for the agent; correct?

A Yes.

Q When did your case go to Court in 1969?

A I can't remember that.

Q You don't remember.

You were arrested in December so it would be sometime in 1970?

A Yes.

Q When your case went to Court do you remember if it was winter or summer in 1970?

A I think sometime in April or May.

Q In April or May, 1970, were you cooperating or working with the agents?

A After that.

Q After that. When after that?

A I can't remember.

Q You don't remember that?

A The exact day or month I don't remember.

Q But in April or May of 1970 you pled guilty?

A Yes.

Q Were you sentenced that day that you pled guilty?

A I can't understand that.

Q The day you pled guilty -- you stood before the judge and said you were guilty of possession of cocaine?

A Yes.

Q On that day were you sentenced or did the judge adjourn the case?

A I don't have a sentence the same day, no.

Q So the judge adjourned the case for how long a period of time?

A I think about a year.

Q About a year and in the interim you began working with the agent?

A Yes.

Q And you knew, did you not, that as a result of working with the agent that you would not have to go to trial?

A I worked for the federal in Miami, not New York City.

Q We have one federal government and you worked

for the federal government?

A Correct.

Q And you began working for the federal government before you were sentenced by the federal judge in Florida?

A I believe that.

Q Now, before you were sentenced --

A He don't promise nothing to me.

Q Who was that?

A He said "No promises."

Q Did you think your working with the federal agents would hurt you with regard to sentencing?

A I can't understand that.

Q Didn't you know at the time, that your working with the federal government would help you with regard to sentencing?

A I don't know.

Q You just decided to work with the federal government because it was nice to do?

A I made a mistake and I wanted to pay for the mistake.

Q But you didn't know that it would help you with sentencing?

A Yes.

Q In your own mind you are telling the jury it could or couldn't help you? You had no thought about that, correct, Mr. Valdez or do you not understand me?

MR. KAPLAN: May we have a question propounded to the witness instead of a statement?

MR. SLOTNICK: I asked if that statement was correct.

Q Is it?

A Excuse me?

Q When you were arrested were you worried about going to jail?

A No.

Q You were not concerned about going to jail?

A I don't like jail. You make a mistake and you pay.

Q Did you go to jail?

A He says "You have to go to court."

I make a mistake before, I paid for that. That is why I cooperate with the Bureau.

Q How many years did you spend in jail as a result of your Florida conviction?

A I don't know.

Q Would you say you went to jail for a year?

A I believe.

Q Would you say you went to jail for two years? Do you understand me?

THE COURT: I think you have a language barrier here.

MR. KAPLAN: He is speaking a little too rapidly.

Q Did you understand the questions Mr. Kaplan asked you?

A Sometimes.

THE COURT: I don't doubt that.

THE WITNESS: Speak to me slow and clear.

THE COURT: Just a moment.

I must sit up here and of necessity make a statement.

I am sure he understood Mr. Kaplan. He spoke to him and I am certain that he understood Mr. Kaplan's voice and language.

I don't think your minds are meeting at this point. Your questions are fair and he is not, likewise, trying to avoid answering. He just does not understand.

You are fast and he is fast.

Did you ever spend time in jail?

THE WITNESS: No.

THE COURT: Obviously he did not understand you.

Q You never went to jail?

A No.

Q And you were worried about the possibility that you might go to jail when you were arrested --

A I think everybody worry for that --

Q -- for cocaine.

But you were never arrested again, were you?

A No sir.

Q And before -- so that it is clear -- before you were sentenced by the federal judge in Florida you began to cooperate with the federal authorities; is that correct?

A All right.

Q And did there come a time when they started to pay you for your cooperation and information?

If you don't understand then tell me you don't and I will try it again.

A Try it again, please.

Q By the way, Mr. Valdez, how long did you live in the United States?

A I come in 1962.

Q And you stayed in the United States until when?

A 1973.

Q Eleven years?

A Yes.

Q And do you read English?

A I understand a little bit.

Q Excuse me?

A I understand a little bit.

Q And in the ten years you were in the United States where did you live?

A In Manhattan and in Brooklyn.

Q And also Florida?

A Florida, I live only a couple of months.

Q This is the period of time you were arrested; correct?

A Yes.

Q When for the first time were you paid by the federal government for giving them information?

A Say it again, please?

Q Were you paid by the federal government for giving them information; paid with money?

A What is the first time that I got paid?

Q That is correct.

A About 1972.

Q About 1972 and when Mr. Kaplan asked you that question you told him that you got paid in about 1972; right?

A So difficult to understand what you say now.

MR. SLOTNICK: Does the government have an interpreter?

MR. KAPLAN: Just move closer and speak slower.

MR. SLOTNICK: Thanks for the direction, Mr. Kaplan.

He understood you back there.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. SLOTNICK: (Cont.)

Q In 1972 you got paid by the federal government?

A Yes.

Q How much did you get paid for being an informer?

A It depends.

Q On what?

A It depends on the job.

Q And the case?

A Yes.

Q The number of people?

A Yes.

Q The amount of cocaine?

A Yes.

Q How much did you get paid for this case?

A For this case?

Q Yes.

A I can't remember now.

Q You don't remember?

A No.

Q Did you file a tax return?

A Always, yes.

Q In fact, you had a Treasury agent help you file a tax return?

A Yes.

Q You would put down this amount of money you got as income; correct?

A Yes.

Q Did the goverment pay you by check or cash?

A Cash.

Q You have no recollection of how much --

MR. SLOTNICK: Withdrawn.

Q -- you don't remember how much they paid you for this case?

A I believe between expenses, about 15.

Q $1,500?

A Yes.

Q What expenses are you talking about?

A You have to go there; go to a bar, buy a drink, pay for the drink.

Q Did you buy drinks on this case?

A I don't remember.

Q You said you had expenses?

A That is what it means.

Q In this case did you have expenses?

A Yes.

Q Did you buy drinks in this case?

A Once.

Q And you got reimbursed by the federal government?

A Umm hmm.

Q Do you have a little piece of paper you filled out indicating how many drinks you bought?

A No.

Q Did you file that piece of paper with the federal agent?

A No.

Q He trusted you? Did he or didn't he?

A I believe that.

Q Do you understand me?

A Yes.

Q Did you ever give the federal agent any kind of receipt for your expenses?

A No, I only sign a paper when he give me the money.

Q Did he give you the money before or after the arrests were made in this case?

A After.

Q And you got $1,500 or maybe more?

A Yes.

Q By the way, did you make any other cases after this one?

A Yes.

Q Did you get more money or less money?
A Sometimes less money.
Q Well, the next case you made, did you make more or less?
A Less money. Sometimes I no get nothing.
Q Well, that is the business.
Were there less people that were arrested the next time?
A Excuse me?
Q How many people were arrested the next time?
A A lot of people.
Q But you got less money.
Did Mr. McElroy give you the money?
A The agent?
Q Yes.
A Yes.
Q The next case, do you remember if it was the following month, three to four weeks later -- the next case?
A The next case for the following month?
Q Right.
A I can't remember that.
Q Was it three months later?
A I believe two or three months later.
Q Did you make another case after that?

A Yes.

Q And another case after that?

A Yes.

Q And you were getting paid all this while?

A No.

Q You stopped getting paid?

A I said to you before I do it for one reason. I make a mistake --

Q I am asking, did you get paid?

A I said, no.

MR. KAPLAN: He did not finish.

MR. SLOTNICK: He is not responding.

MR. KAPLAN: May we have a response to the question.

A I don't have a pay.

Q You didn't get paid for the other case?

A No.

The reason I work and cooperate is I want to cooperate free and the money he gave me -- sometimes I left the job for two, three months and he paid me.

Q Isn't it a matter of fact in July, 1972 you left the United States and went to Central America?

A In July, 1973.

Q How did you get to Central America? Did you

fly?

A Yes.

Q Did the government pay for the flight?

A Excuse me?

Q Did you pay for the flight?

A No, I paid.

Q Did you go First Class?

A Yes.

MR. KAPLAN: I am having trouble seeing. May Mr. Slotnick move away from the witness.

Q Now, you presently live in Central America. Tell us where?

MR. KAPLAN: Objection.

THE COURT: Sustained.

MR. SLOTNICK: Your Honor, may we have a sidebar?

THE COURT: Objection sustained. You will not get the address.

Q Do you have an automobile?

A Yes.

Q What kind of car do you drive in Central America?

A I don't have a car in Central America. I have a car for the company.

Q Who got you the job?

A Myself.

Q What is the job?

A Contracting construction.

Q As a result of that you have a company car?

A Yes.

Q Do you live in a house?

A Yes.

Q Is it a company house?

A No, I rent the house.

Q Do you have a family?

A Yes.

Q You pay the rent for the house?

A Yes.

Q Did you have bank accounts in the United States?

A No.

Q No bank accounts?

A No sir.

Q How did you keep your money, the $1,500 the agent gave you?

A I use it to go to Central America.

Q But that was a year later. What happened during the year?

A I gave it to my father.

Q He held the money for you?

A Yes.

Q Now, when you first --

MR. SLOTNICK: Withdrawn.

Q When did you first meet my client?

A I believe in April.

Q April of what year?

A '72; 1972.

Q Where did you meet him?

A In the street.

Q Who was there?

A Pedro and Ramon.

Q Who else?

A The other fellow. The name is Luis.

Q What other fellow?

A Pedro and Ramon and the other fellow, named Louie.

Q Who was he?

A He was the friend of Pedro and Ramon at that time.

Q What is his full name?

MR. KAPLAN: Objection.

THE COURT: If he knows who he is.

MR. KAPLAN: Objection to the name coming out.

May we approach the side-bar?

MR. SANTANGELO: I think so.

MR. SLOTNICK: I think we should, your Honor.

MR. SANTANGELO: The United States Attorney seems to be directing the witness not to answer.

THE COURT: He may have good reason.

I will sustain the objection.

Q What is Louie's last name?

MR. KAPLAN: Objection.

THE COURT: Sustained.

MR. SANTANGELO: May we have a side-bar?

THE COURT: Objection sustained.

You are not entitled to it.

A I only know the name Louie.

MR. SANTANGELO: I wish to make an application.

THE COURT: After I dismiss the jury.

Q Where did Louie live?

A I don't know.

Q How did you meet Louie?

A I met him before.

Q How, where?

MR. KAPLAN: Objection to the line of testimony

MR. SLOTNICK: I am testing his credibility.

He claims he was introduced by Louie and I want

to find out who he is or how he met him.

THE COURT: He says he knows him only by the name "Louie".

MR. SLOTNICK: I'd like to find out about Louie.

MR. KAPLAN: Objection to Mr. Slotnick's statement.

THE WITNESS: I could say I know Louie from someplace in any bar.

Q And that wouldn't be the truth?

MR. KAPLAN: Objection.

THE COURT: He can answer.

Q You can say that and that will satisfy me --

MR. KAPLAN: Objection. This is argumentative.

THE COURT: Can you tell him where you met Louie?

THE WITNESS: I can't remember where I met that guy Louie. I can't say in a bar or anyplace because I don't remember.

Q And it is your testimony that Louie introduced you to my client?

A Yes.

Q Now, did Louie say that you were a nice person? What did Louie say to my client about you?

A When Louie introduced me to Pedro and Ramon he says "This is a good guy. He is good in the business. He

can buy anything you have. You can do business with him."

Q Did you report Louie to Agent McElroy?

A Excuse me?

Q Did you report Louie to Agent McElroy?

A I can't. I don't see him no more.

Q You met Louie. He introduced you and he disappeared?

THE COURT: He never saw him again.

MR. KAPLAN: Objection, your Honor.

Q You don't know where I can subpoena Louie?

MR. KAPLAN: Objection.

THE COURT: He can answer that.

A I don't know where to find him. I don't live here now.

Q When you first met Louie -- or was it the same day in April that you met Louie that you met my client?

A No.

Q When did you meet Louie?

A Before.

Q When?

A Before. I don't know.

Q A long time before?

A A month.

Q And Louie was a man known to you to be involved

in the cocaine business?

A I believe that. I don't know.

I never spoke to him except at that time. I met Louis. I talked to him and I said "Listen, you know somebody who got cocaine?"

He said "I know two guys in the business" -- Pedro and Ramon -- "and I will introduce you." But at that time he didn't say the name but he introduced them to me.

Q At that time were you cooperating with the federal government when you met Louie?

A Yes.

Q Did you take Louie's name or address down?

A I can't. He don't have nothing. I wouldn't waste my time for that moment.

Q Did you report him to Agent McElroy saying "Louie knew where there was cocaine"?

A I believe that.

Q Mr. Valdez, does Louie exist?

A Yes.

MR. KAPLAN: Objection.

Q Did you ever tell anybody about Louie in any official report anywhere?

A I can't remember.

Q I don't blame you.

MR. KAPLAN: Objection to all these statements. May we have a side-bar?

THE COURT: Ad libbing is not necessary.

MR. KAPLAN: May we approach the side-bar?

THE COURT: What for? I made a ruling. Why go over there and hear it again.

Q Was Louie tall?

A Yes.

Q About as tall as I am?

A Yes.

Q Fat or skinny?

A Skinny.

Q He was a Cuban?

A I don't know where he is from but he is no Cuban.

Q Did he speak Spanish?

A Yes.

Q Did he have a wife?

A I don't know.

MR. KAPLAN: Objection. This is beyond the bounds of cross-examination.

THE COURT: He is testing --

MR. SLOTNICK: Credibility.

Q Try to remember where you first met him.

A I can't remember exactly if it was a bar or street or someplace.

Q The first time you saw Louie in a bar or a street -- the first time that you saw Louie in a bar or on the street and you were introduced, who introduced you to Louie?

A I can't remember who introduced him to me or I met him in a bar and I was introduced to him.

Q And you said "Do you know where I can get some cocaine, Louie?"

A That is the way you do it.

MR. KAPLAN: Objection.

THE WITNESS: May I say something?

MR. SLOTNICK: Wait for the question.

Q Is Louie English or Spanish speaking?

A He was Spanish.

Q Is it Luis or Louie?

A Louie.

Q You don't know where he came from, Cuba or Central America or where?

A No.

Q But Louie introduced you to my client?

A Yes.

Q And when this Louie introduced you to my client

where were you? Were you in a bar?

A No, it was in Queens, I think. I believe some-place 102 or 103 Street.

Q You were out in the street?

A Yes.

Q In the street?

A Yes.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. SLOTNICK: (Cont.)

Q There is no place ever, in a bar that you remember being with Louie? Do you remember ever being with Louie in a place with a name with other people being Louie?

A I can't remember.

Q Where did you meet Louie that day in April when you first met my client?

A It was in the street.

Q Louie was in the street?

A Yes.

Q And you were in the street?

A Yes.

Q And Pedro and Ramon were in the street?

A Don't forget, they live in Queens.

I saw Pedro and Ramon speaking to him.

Q Let's see if we have this clear.

You were walking your beat --

MR. KAPLAN: Objection.

THE COURT: We cannot have paraphrasing of testimony.

Q You were walking around Queens.

Do you remember if it was a Saturday morning or Friday morning?

A I can't remember.

Q Do you remember if it was a morning?

A I think in the afternoon.

Q You were walking around Queens?

A Yes.

Q And lo and behold, who do you see --

MR. KAPLAN: Objection.

THE COURT: Not "lo and behold."

Q Who and what did you see?

A I was walking and saw Louie and these two fellows. I walk to the three people.

Q And what did you say?

A Louie started a conversationand introduced me to Pedro and Ramon.

Q What did he say?

A "Alfredo, this is the two guys I spoke to you before. You can do business about cocaine. Both is a big guy and I leave you in the conversation" and then Louie left.

Q And then Louie left?

A Yes.

Q Was this the second time you ever saw Louie?

A Yes.

Q So, the first time you saw Louie he told you that he knew two guys who were big in cocaine?

A Yes.

Q And the second time you bumped into these two guys --

A The first time he saw me he do a business.

Q Louie?

A No, Pedro and Ramon. They tried to do a business with me.

Q Answer my question.

You met Louie and he told you about two men big in cocaine?

A Say it again?

Q You met Louie?

A Yes.

Q Once?

A Yes.

Q And that one time he told you he knew two fellows big in cocaine?

A I meet him once but I saw him a couple of times in the street but I don't say I speak to him.

Q Wasn't it your testimony that the second time you met Louie it was in the street with Pedro and Ramon? Do you remember that or was that a mistake?

A Explain it to me, please.

Q Let the record say it for itself --

MR. KAPLAN: Objection to those gratuitous statements.

Q Now, in April, you say that somebody gave you a business card; is that correct?

A Yes.

Q Was it Pedro or Ramon who gave you the card?

A Ramon.

Q Do you have that business card?

A No, I give it to Gene.

Q Who is Gene?

A Gene McElroy.

MR. SLOTNICK: May I have it, please?

MR. MC ELROY: I don't have it.

MR. KAPLAN: We don't have it.

MR. SLOTNICK: Well, if you do --

MR. KAPLAN: Do you want to call me to the stand? It is no longer in our possession.

MR. SLOTNICK: Then it's not.

Q Do you remember what the card said?

A I can't remember but it got both names, Pedro and Ramon and the address to the place, to the store.

Q What color was the card?

A I can't remember; green, blue or white.

Q Was it green, blue or white?

A I can't remember that.

Q Then why guess? Do you know if it is green?

A I don't know.

Q Then why say green, blue or white? You don't know what color it was.

A I don't know what color it was.

THE COURT: We will take a five minute recess.

(Recess taken.)

(After recess.)

THE COURT: Bring in the jury.

(Jury entered jury box.)

A L F R E D O V A L D E Z , having been previously duly sworn by the Clerk of the Court, resumed the witness stand and further testified as follows:

THE COURT: We will work ten minutes or so and come back tomorrow at 11.

JUROR NUMBER 2: Will we be here late tomorrow?

THE COURT: I anticipate we may finish the case.

JUROR NUMBER 2: I am a Sabbath observer.

JUROR NUMBER 9: I am too.

THE COURT: Well, we will cross that bridge when we come to it. We have two alternates.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. SLOTNICK: (Cont.)

Q By the way, that store where the paints were stored -- do you remember that store?

A Yes.

Q How many times did you visit that store?

A I believe about four, five times.

Q And prior to your going to that store did you call Agent McElroy and tell him you were going to the store?

A Yes.

Q Each and every time?

A Yes.

Q Do you know if he surveilled you going into and out of the store?

A Excuse me?

Q Do you know whether Agent McElroy surveilled you, watched you -- an undercover word, surveillance -- going into the store and coming out of the store?

A No sir.

Q There is no report to that effect, is there?

A No sir.

Q And when you were in the store on those four or five occasions you say you were, who else was there?

A Pedro and Ramon.

Q Every time?

A Yes.

Q Every occasion?

A Yes.

Q Between April and May 25th?

A Yes.

Q And was anyone else in the store?

A No.

Q At any time did you observe anybody else in the store?

A I can't remember. I don't see nobody, only Ramon and Pedro.

Q When you spoke to Ramon and Pedro in the store during those four or five times, where would you talk to them?

A Inside.

Q You laid out the store as being large. Where inside?

A Sometimes in the little store or sometimes I walk downstairs in the basement.

Q Before May 25 -- forget about May 25 -- you were in the basement how many times?

A A couple of times.

Q What did you see in the basement?

A They got the water house where they put the

paints --

Q Where Pedro and Ramon kept their paints?

A Yes.

Q What else did you see there? Did you see fruit there?

A No.

Q Did you see boxes there?

A I can't remember if I see boxes. I know I see paint.

Q Do you remember seeing anything else there?

A No.

Q What were you doing in the basement?

A Sometimes when I knock on the door then Pedro and/or Ramon opened it and they take me downstairs to speak.

Q How long will you stay there?

A Few minutes.

Q There is no official government report showing that?

A All the time I --

Q Is these or isn't there?

A I give a report --

Q Is there an official government report showing your presence there prior to the 25th, yes or no?

A Say it again now?

Q You have answered that.

By the way, in May, you were working for the federal government; correct?

A Yes.

Q And you had a phone at home?

A Yes.

Q And you claim that somebody called you on the phone at home; is that correct?

A Yes.

Q Did you make a recording of that phone call?

A No sir.

Q Did anybody listen to that phone call?

A No sir.

Q Is there anybody else in the world who could tell us about that phone call?

A No sir.

Q How soon after you were arrested did you get paid?

MR. KAPLAN: Objection as to him being arrested.

THE COURT: Yes.

MR. SLOTNICK: I'm sorry.

Q How soon after May 26 did you get paid?

MR. KAPLAN: There is no May 26 in this case.

Q May 25. How soon after May 25 did you get paid?

A I believe about a week after that.

Q About the following week?

A Yes.

MR. SLOTNICK: That should do it for today.

THE COURT: Do you want to start?

MR. SANTANGELO: I'd rather start in the morning.

THE COURT: You can't finish this afternoon?

MR. SANTANGELO: I don't think so.

THE COURT: Let's try it. We will that much further ahead.

MR. SANTANGELO: I will try, your Honor.

CROSS-EXAMINATION

BY MR. SANTANGELO:

Q Mr. Valdez, my name is George Santangelo and I represent Mr. Bruzon.

After you were arrested on May 25 --

MR. KAPLAN: Objection. There is no testimony he was ever arrested. They keep saying he was arrested. He was an agent of the government.

Q After May 25 you gave a statement to the government, didn't you, concerning the events of May 25 and May 24?

A After the 25th?

Q Yes.

A What kind of statement?

Q Didn't you say you signed a statement?

A For the money I was getting.

Q Did you sit down with Agent McElroy and tell him essentially what happened on May 24 -- after May 25?

A No.

Q You never sat down and talked to him about what happened after May 25?

A What did I have to say after the May 25?

Q When did you get here into this country prior to testifying today?

A 1962 --

Q No, no.

When did the government bring you up from Central America to testify today?

A Friday.

Q Last Friday?

A The 22nd.

Q And you have been staying here at the government's expense?

A Yes.

Q You have a family in Central America?

A Yes.

Q A wife?

A Yes.

Q Children?

A Yes.

Q Did you have them living with you in New York in 1972?

A Yes.

Q Where did you live in 1972?

A Queens.

Q Where in Queens?

A Ithaca Street.

Q Did you live in an apartment?

A Yes.

Q How many rooms?

A Two room.

Q How many children do you have?

A One children.

Q Do you know the address of the building?

A 47-17 -- 45-17, Ithaca Street.

Q How much rent did you pay?

A 180.

Q $180 a month for two rooms?

A For the bedroom; two bedroom.

Q It had a living room?

A Yes.

Q A dining room?

A With the kitchen.

MR. KAPLAN: Objection as to relevancy.

MR. SANTANGELO: It shows the standard of living when he was paid by the government --

THE WITNESS: I was working --

Q Where?

A In a parking lot.

Q As an attendant?

A Yes. I still have my union card.

Q You still pay your dues?

A Not now. I don't live here.

Q You had a car?

A '64 Dodge.

Q When did you buy that?

A My brother gave it to me.

Q When?

A A long time ago.

Q How long ago?

A About 1971, 1972.

Q After you began cooperating with the government?

A Yes, after.

Q Now this -- you pled guilty in 1969, correct?

A Correct.

Q And you were arrested in 1969 in possession of one kilo of cocaine; is that correct?

A Yes.

Q How much did that kilo cost you?

A At that time $10,000.

Q And you planned to sell it to someone else; is that right?

MR. KAPLAN: Objection to what he planned to do.

THE COURT: Yes. Possession only.

Q Were you going to use the cocaine?

A No.

MR. KAPLAN: Objection to relevancy.

THE COURT: It is immaterial.

Q Did you know someone at the time who would buy it from you?

MR. KAPLAN: Objection. It is irrelevant.

THE COURT: It has nothing to do with this case especially in point of time.

Q Let's get back to May 25, 1972.

You say you saw Ramon down in the basement; correct?

A I saw Ramon -- the day of the arrest?

Q Yes.

A Yes.

Q You saw him in the basement?

A Yes and Pedro too.

Q And Pedro too?

A Yes.

Q Now, was Ramon on the ground floor when you went in?

A Ramon opened the door -- no, Pedro opened the door. Ramon was downstairs.

Q He was downstairs when you walked in, not on the ground floor?

A Yes.

Q You walked down the stairs?

A Yes.

Q Wher e was Ramon?

A To the left side of the basement.

Q What was he wearing?

A Exactly -- I think he got a painting uniform.

Q Did he have a sweatshirt on of some kind?

A I can't remember exactly what he wear at that time.

Q Now, you were there for about half an hour; is that right?

A Most -- 30, 40 minutes.

Q And you say Ramon was mixing the cocaine with

something else?

A Yes.

Q Do you know what he was mixing it with?

A I saw the bottle and he put inside cocaine.

Q Was it a powder or liquid?

A A powder.

Q What was it, do you know?

A I think what you call dextrose.

Q Dextrose?

A Yes.

MR. SANTANGELO: May I have this marked for identification, please.

THE CLERK: Document marked for identification as defendant's exhibit A.

(So marked.)

Q I show you defendant's exhibit A and I ask you if you recognize that?

A I think this was part of the basement.

Q Is that a fair representation of the basement as it was on May 25?

A This is part of the basement. Not all. The basement is a little more big one.

Q But this is part of the basement?

A But not where I see Ramon and Pedro.

Q But it is part of the basement?

A Yes.

MR. SANTANGELO: I offer it in evidence.

MR. SLOTNICK: No objection.

(Photograph shown to counsel.)

(Pause.)

MR. KAPLAN: Objection on the grounds of materiality.

This depicts nothing with respect to the case.

THE COURT: He says it is not part of the basement he is speaking about.

MR. SANTANGELO: It will become clear.

MR. KAPLAN: It is not clear now.

MR. SANTANGELO: If we have a side-bar I can explain what I mean.

MR. SLOTNICK: Perhaps in view of the hour, your Honor --

THE COURT: Yes. We will adjourn now.

Do not discuss the case and keep an open mind.

(Jury excused for the day at 5 p.m..)

THE COURT: All right. You may step down.

Now, what is the problem?

MR. KAPLAN: Objection on the ground of materiality.

This has no connection with the case. Anybody can take a picture. He could have taken a picture of the Statue of Liberty and he could have said "Yes" he has seen it.

MR. SANTANGELO: I asked if that was part of the basement. I was going to ask him if the items in the picture were there on May 25 and before. It is relevant as to who used the basement and the items --

MR. KAPLAN: What is going to be shown --

MR. SANTANGELO: The boxes in the picture depict the boxes of other people and they are not the sole and exclusive possession of the defendant.

THE COURT: You cannot prove it through him.

MR. SANTANGELO: Not all but he can identify the boxes as being the boxes there.

MR. KAPLAN: It does not make sense to have this witness testify to it.

MR. SANTANGELO: He answered "Yes" as to May 25.

THE COURT: He said it is another part of the basement.

MR. SANTANGELO: Yes and it is relevant.

THE COURT: I will rule on it tomorrow morning.

MR. KAPLAN: May we have the picture?

MR. SANTANGELO: Nope.

MR. KAPLAN: He won't show me the picture, your Honor.

MR. SANTANGELO: Oh. You just want to see it. Come over here and I will show it to you.

(Court adjourned for the day.)

* * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA, :

- against - : 72 CR 644

PEDRO MORELL and
RAMON BRUZON, :

Defendants. :

----------X

United States Courthouse
Brooklyn, New York

March 1, 1974
10:00 A.M.

B e f o r e :

HON. MARK A. COSTANTINO, U. S. D. J.

Ilene Ginsberg
Acting Official Court Reporter

Appearances:

EDWARD J. BOYD, V, ESQ.,
United States Attorney for the
Eastern District of New York

BY: KENNETH KAPLAN, ESQ.,
Assistant United States Attorney

BARRY SLOTNICK, ESQ.,
Attorney for the Defendant Morell

GEORGE SANTANGELO, ESQ.,
Attorney for the Defendant Bruzon

* * * *

THE COURT: All right. We are ready to commence.

MR. SANTANGELO: We ended up yesterday discussing the introduction of that picture.

THE COURT: I will allow it for the limited purpose to show some other portion of the basement but for no other purpose.

THE CLERK: Defendant's exhibit A previously marked for identification marked in evidence as indicated by the Court.

(So marked.)

THE COURT: Bring in the jury.

(Jury entered jury box)

THE COURT: Good morning. We are ready to start.

A L F R E D O V A L D E Z, having been previously duly sworn by the Clerk of the Court, resumed the witness stand and testified further as follows:

CROSS EXAMINATION

BY MR. SANTANGELO: (Cont.)

MR. KAPLAN: Your Honor, if there are any witnesses in the courtroom for the defense I ask they be excluded.

MR. SLOTNICK: May we have as I indicated no substantive witnesses.

THE COURT: I don't care whether they are substantive witnesses or not. No witnesses.

MR. SLOTNICK: May we have a side-bar?

(Side bar discussion.)

MR. SLOTNICK: Your Honor, we have in Court a character witness. He is just going to testify to character and also the wife and the brother.

THE COURT: Oh, they don't have to leave.

MR. KAPLAN: I would ask witnesses to be excluded.

MR. SLOTNICK: Your Honor, the character witness was kind enough to come down. Why make him uncomfortable by having him stand in the hall?

MR. KAPLAN: The witnesses should be excluded.

MR. SLOTNICK: It is better for you. You can say "After listening to all this testimony do you think his reputation is good?"

THE COURT: I will let him stay. That's all.

(Conclusion of side-bar discussion.)

(The following held in open Court.)

(Continued on next page.)

CROSS-EXAMINATION

BY MR. SANTANGELO: (Cont.)

Q I show you two pieces of paper dated June 15, 1972 and I ask you if you recognize them?

A Yes.

Q Would you identify this?

A That is the statement I gave to the agent Gene McElroy.

Q This is a statement that you gave to Agent Eugene McElroy on June 15, 1972; correct?

A Yes.

Q And that statement contains the facts of the case as you remembered it on June 15, 1972?

A The most.

Q You arrived here on last Friday?

A Yes.

Q After you arrived here you had discussions with the United States Attorney about this case?

A No.

Q No discussions at all?

A No, Friday and Saturday.

Q When did you have your first discussions with the United States Attorney about this case after you got here?

A I just got to speak to him a few questions.

Q How long did he speak to you?

A Few minutes.

Q Five minutes?

A I can't remember how long; maybe five minutes maybe twenty.

Q Less than five minutes?

A No, more.

Q Did you talk with Agent McElroy after you got here Friday?

A No, I talk to him on Monday.

Q Did you talk to him on Tuesday about your testimony in this case?

A Yes.

Q Now, you left the stand yesterday -- you left Court yesterday at 5 o'clock.

Did you talk to the United States Attorney last night about your testimony?

A Yes.

Q What did you say to him and what did he say to you?

A The same questions I have over here.

Q He asked you the same questions over again last night?

A A few questions.

Q What questions?

MR. KAPLAN: I object to what questions I asked as being irrelevant.

MR. SANTANGELO: This witness was in the middle of cross-examination yesterday afternoon and the United States Attorney he testifies, asked him questions after he got off the stand and the Court I believe had instructed that the agent and the United States Attorney not talk to the witness.

THE COURT: No.

MR. KAPLAN: There was nothing like that.

THE COURT: I made no statement like that.

The jury will disregard counsel's statement.

Q Did anyone suggest to you last night that you change any part of your testimony?

A No sir.

MR. SANTANGELO: May I have this marked for identification.

THE CLERK: Document marked for identification as defendant's exhibit B.

(So marked.)

Q I show you this picture and I ask you if you can identify it?

A I know the freezer he has got in the store in the

front but I can't remember that over there (indicating).

Q Except for the part that you cannot remember --

MR. KAPLAN: Objection, your Honor.

Well, I will wait until he finishes the question.

Q Is that picture a fair representation of the inside of Pedro and Ramon's store as you remember it on May 25, 1972?

MR. KAPLAN: Objection.

MR. SLOTNICK: I object to the characterization that it is Pedro and Ramon's store.

MR. KAPLAN: He said he doesn't remember one of the things in the picture.

THE COURT: Objection sustained.

MR. KAPLAN: How can he identify it if he doesn't remember --

MR. SLOTNICK: It has been sustained, Mr. Kaplan. You don't have to qualify it.

THE COURT: It has been sustained.

Q In 1972 you worked as a parking attendant?

A Yes.

Q At one place?

A Different places.

Q Did you work in the daytime?

A Sometimes the day, sometimes the night.

Q In April, 1972, when did you work?

A I work for the agent then at that time.

Q In April?

A Yes.

Q How about in March?

A Yes.

Q You worked as a parking lot attendant in March?

A Yes.

Q Did you work in the day or night?

A Sometimes I work the day, sometimes the night.

Q How about February?

A Same thing. I work extra.

Q And how about January, 1972?

A The same.

Q Now, the day that you say you met Luis with Ramon and Pedro, do you remember what time of the day it was?

A It was the afternoon, late in the afternoon.

Q About 3 or 4 o'clock?

A After that. About 4 or 5 o'clock.

Q Did you go to the store on the day before the arrest took place?

A The day before? No.

Q Is it your testimony that every time you went to the store that you saw Ramon and Pedro?

A Yes.

Q Did you not say on June 15, 1972 that on May 24, 1972 "I went to 90-19 31st Avenue to contact two men I know as Pedro Morell and Ramon Bruzon."

Did you say that on June 15?

A On June 15?

Q In the statement you signed did you say you were there on May 24, the day before the arrest?

A I can't remember that.

THE COURT: Counselor, let the witness stay on the stand and I will be back in two minutes.

(Short recess taken.)

(After recess.)

THE COURT: Okay, counselor.

CROSS-EXAMINATION

BY MR. SANTANGELO: (Cont.)

Q Is it your testimony that every time you went to the store Pedro and Ramon were there and you spoke with them both?

A Yes.

Q Do you remember saying on June 15, 1972 --

A What do you mean, "June"?

Q On the statement you made, June 15, 1972, which you signed in front of Agent McElroy and Agent Tierney, do you

remember saying, "When I got to 90-19 31st Avenue I went in side and talked to Pedro Morell. He said that he and Ramon Bruzon had received a shipment of cocaine but I have to talk to Pedro about it."

A This was in May.

Q Was Ramon there on May 24, 1972 when you said he wasn't there?

A I can explain to that --

Q Yes or no?

A I can explain --

MR. KAPLAN: Your Honor, he is badgering the witness.

THE COURT: Not yes or no. If he can answer he does.

Q Can you tell me whether Ramon was at the store on May 24, 1972 -- yes or no -- can you tell me that?

A On May 24?

Q Yes.

A I can't remember that.

Q You can't remember the day before the arrest took place.

Now, on the 25th, the day of the arrest, you knocked on the door of the store, did you not?

A Yes.

Q Who opened the door?

A Pedro.

Q And you walked inside?

A Yes.

Q And Pedro was there alone on the ground floor; is that right?

A Yes.

Q And you asked him something, did you not?

A I asked for Ramon.

Q - You did not see Ramon, did you?

A No.

Q What happened then?

A Pedro, he go with me downstairs and I see Ramon in the basement.

Q Now, did you not say on June 15 of 1972, "I went up to the door of 90-19 31st Avenue and was let inside by Pedro Morell. When I got inside I talked with Pedro Morell and Ramon Bruzon about the cocaine I was going to buy that day. Pedro Morell and Ramon Bruzon then took me into the basement of 90-19 31st Avenue."

Didn't you say that -- yes or no -- didn't you say that?

Look at that (indicating) and tell me if you said that.

Read there (indicating) and then tell me if you said that.

(Pause.)

A Yes, I said that but it say nothing about June.

Q You said that in June?

A No but it said nothing about June.

Q No. You said -- don't look at the United States Attorney --

THE COURT: No, no, Mr. Santangelo.

MR. KAPLAN: I object. Those are improper comments.

THE COURT: Mr. Santangelo, make no comments or asides. Just try the case. All right?

MR. SANTANGELO: Yes, your Honor.

Q Mr. Valdez, just tell the jury whether you said in this statement that on May 25, when you got there both Ramonand Pedro were there?

Didn't you say that in that statement?

A I say May 25 I knock on the door; Pedro open the door and I ask for Ramon and he say "Ramon is downstairs in the basement."

(Continued on next page.)

CROSS-EXAMINATION

BY MR. SANTANGELO: (Cont.)

Q You said that in that statement --

A That statement -- by that time -- the agent, Gene McElroy -- I explained to him. Maybe he didn't understand a few words.

Q Maybe Mr. McElroy didn't understand?

A He understand that but he say "June" and this is May.

Q Well, on June 15, 1972, that was 20 days after the arrest, wasn't it?

A I believe that.

Q Did you have trouble remembering 20 days after the arrest?

A Excuse me?

Q Did you have trouble remembering what happened 20 days after the arrest?

A No.

Q Are you having trouble remembering now?

A No.

Q But you remember things differently now than you did on June 15, 1972, don't you?

MR. KAPLAN: Objection. It is argumentative.

THE COURT: Yes, it is argumentative.

It is for the jury to determine.

Q Now, after either Pedro brought you down or Pedro and Ramon brought you down to the basement your testimony is that Ramon mixed the cocaine?

A Yes.

MR. SANTANGELO: May I have government's exhibit -- is it 1?

(Document handed to counsel.)

Q Government's exhibit 1 is the picture you identified as the cocaine?

A Yes.

Q Now, is that white powder that I see on the floor there?

A I don't know.

Q Do you remember there being white powder on the floor?

A I don't remember.

Q But he was mixing the cocaine?

A Yes.

Q How was he mixing it?

A I can't understand that.

Q Was he mixing it standing?

A He sits with it on the floor in a pile. He put the cocaine inside and he mix.

Q He was sitting on the floor?

A Yes.

Q Did he have his legs [illegible] between his legs?

A I can't see from the [illegible].

Q How was he sitting?

A Sitting down.

Q Very close to the floor?

A Yes.

Q What was he wearing; pants?

A I believe that.

Q Work pants?

A I believe that.

Q And some kind of shirt?

A I believe that.

Q Did he mix the cocaine with [illegible]?

A No.

Q How did he do it?

A He used a plastic bag.

Q How did he use the plastic bag?

A Excuse me?

Q How did he use the plastic bag?

A He put the cocaine inside and then cut [illegible] up this way (indicating).

Q So, there was cocaine in a plastic bag?

A Yes.

Q And he took something to cut it with?

A Yes.

Q Do you know where he got the cutting ingredients?

A He got it over there (indicating).

Q From this bottle?

A Yes.

Q It all came out of the bottle?

A Yes.

Q He put it in the plastic bag?

A Yes.

Q And he closed the top of the plastic bag with his hands?

A Yes.

Q And he went like this, shaking it back and forth so it all mixed well?

A Yes.

Q And some of that cocaine and whatever he mixed it with, did that get out of the bag; a little powder?

A He don't open the bag. It no have to come out.

Q But he didn't seal it with a heat seal?

A He could tie it up with something.

Q Did he tie it up?

A Not to get out.

Q How long does this process take place?

A I believe about 30, 40 minutes.

Q 20 or 30 minutes?

A 30 or 40 minutes.

Q So your testimony is that Ramon sat on the floor and mixed cocaine with something out of this bottle for 30 or 40 minutes?

A Yes.

Q Shaking it?

A Yes.

Q Let me show you this picture again.

Do you see what is on the right-hand side of that picture?

A Where?

Q Here.

A I can see it but I don't know what they is over there.

Q Are they boxes?

A Maybe.

Q Did you ever see those boxes there before?

A I can't remember.

Q How many times were you there?

A A couple of times I went downstairs.

Q A couple of times you went downstairs who did you go downstairs with?

A Both.

Q Did you only go to one portion of the basement when you went downstairs?

A Yes. You can see the whole basement in the middle.

Q And you saw the whole basement?

A The most.

Q And you saw paint cans and ladders?

A I saw five gallon paint on the floor.

Q Did you see these boxes?

A I can't remember.

Q You can't remember those boxes?

A I can't remember that in that place.

MR. SLOTNICK: I didn't hear the witness.

MR. SANTANGELO: He can't remember.

Q Yesterday you said something about a fruit store?

A Yes.

Q Was there a fruit store connected to the store?

A Yes.

Q And there was a refrigerator in the store?

A Empty, yes.

Q This refrigerator was in the area of the store

where you first went in on May 25?

A Yes.

Q It is a refrigerator about this high; 5-1/2, 6 feet high?

A Yes.

Q By about this long; about 7 or 8 feet long?

A Something like that.

Q And there was a man, during May of 1972 --

A Excuse me?

Q There was a man, in May of 1972 who used to sell fruit there?

A He sell fruit but I never see a man over there.

Q They sold fruit?

A That is what he figured out; that he sell fruit but I never see nobody sell it.

I saw a couple of apples, bananas.

A lady came to the store and say "Do you have the oranges" and he said "No."

Q Asked you?

A I can't remember if it was Pedro or Ramon at that time.

Q Asked Pedro or Ramon for oranges?

A Yes.

Q Was there a man there by the name of Ramon?

A I don't remember.

Q A fellow by the name of Chino?

A I never saw a man there.

Q You never saw a man there --

MR. KAPLAN: Objection, your Honor.

THE COURT: He said he never saw a man there.

Q How much did you make in 1972 as a parking lot attendant?

A How much? I don't remember now.

I think my tax when I fixed my tax it was close to $3,000.

Q $3,000 for the year 1972 as a parking lot attendant?

A Yes.

Q Did your father live in this country in 1972?

A Yes.

Q Did he live in New York City?

A Yes.

Q Did he live near you?

A Yes.

Q Is he married?

A My father?

Q Yes.

A Yes.

Q Living with your mother?

A Yes.

MR. KAPLAN: Objection. This is irrelevant.

THE COURT: Yes.

Q Did you pay their rent?

A Yes.

Q How much?

A 180.

Q So, you paid their rent and your rent?

A Not my father's rent.

Q Where did your father work?

A In a restaurant.

Q Where?

A My sister's restaurant.

MR. KAPLAN: Objection.

THE COURT: I don't see what it has to do with the case.

MR. SANTANGELO: It has to do with whether or not he was dealing with cocaine in 1972.

THE COURT: Objection sustained.

MR. SLOTNICK: I would like a side-bar.

(Side bar discussion.)

MR. SLOTNICK: Your Honor, the Court of Appeals indicated that a standard of living can be used to

show a man dealing in drugs and part of our defense is that the witness is dealing in drugs and was dealing in drugs and it should be shown to the jury and weigh upon his credibility.

A man paying $180 a month rent and earning $3,000 a year income --

MR. KAPLAN: Certainly has nothing to do with his father's restaurant.

MR. SANTANGELO: Your Honor, I tested his credibility by saying "Where does your father work."

THE COURT: You want to test him, all right, but don't bring in family.

MR. SLOTNICK: I believe Mr. Santangelo wanted to ask if he put up the money for his sister's restaurant.

THE COURT: All right. I will allow that.

I do not want these arguments made in front of the jury.

MR. SLOTNICK: I think it goes for all sides.

THE COURT: In this Court you cannot do it.

(Conclusion of side bar discussion.)

(Following held in open Court.)

BY MR. SANTANGELO:

Q When did your sister buy her restaurant?

A I don't know. It was a long time ago.

Q How long ago? Was it after you started to cooperate with the government?

A Before that.

Q Did you put up the money for that?

A No sir.

Q Did you lend her the money for that?

A No, she has got the restaurant before I come to this country.

Q How much cash did you give your father in 1972?

A I never give cash to my father.

Q You never gave cash to your father.

Didn't you testify yesterday --

MR. KAPLAN: He keeps repeating the answer, your Honor.

THE COURT: Mr. Santangelo, you get an answer to the question and you go on.

Q Didn't you testify yesterday that you gave cash to your father in 1972?

A Maybe I don't understand what you said yesterday.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. SANTANGELO (Cont.):

Q Isn't it a fact that in 1972 you were dealing in cocaine for your own profit?

A No, sir.

Q Isn't it a fact that you didn't live on $3,000 a year?

A I can't live on that. I do extra jobs.

Q You did extra jobs?

A Yes, carpenter --

Q So, you were a carpenter --

MR. KAPLAN: Your Honor, an opportunity for the witness to answer would be in order.

Counsel keeps making statements.

MR. SLOTNICK: I object to speeches by Mr. Kaplan.

THE COURT: Yes.

Q This statement you made, June 15, 1972 --

A I didn't say I made it in June -- in May.

Q Maybe you don't understand me, Mr. Valdez --

A Maybe --

Q (Continuing) The statement is typed up June 15, 1972?

A Yes.

Q And it is signed by you and witnessed by Agent McElroy and Agent Tierney?

A Yes.

Q You said in the statement that it is true and correct to the best of your knowledge?

A Yes.

Q Is it true and correct to the best of your knowledge?

A Yes.

Q Did you sign that statement that "No threats, force, or promises of reward have been made to me"? Did you say that no rewards or promises of rewards were made to you?

A Yes.

Q Were you paid $1,500 for this case?

A Yes.

MR. SANTANGELO: Nothing further.

THE WITNESS: But no promises.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. KAPLAN:

Q Can you tell us, Mr. Valdez, how much time you devoted on a number of these cases in, for example, on this case -- how much of your own personal time?

A Sometimes weeks, sometimes months.

MR. SLOTNICK: I object to the question and the answer is not responsive.

THE COURT: No, it is not responsive.

Q How much time did you spend talking to Agent McElroy and meeting with Agent McElroy and the defendants? How much of your own personal time did you spend with this case?

A I spent about more than a month.

Q And how much time would you say you spent with regard to other cases in 1972?

MR. SLOTNICK: Objection to other cases.

MR. KAPLAN: The door has been opened, your Honor.

MR. SLOTNICK: Objection.

THE COURT: I am going to sustain it.

We are concerned with this case and the balance of the testimony was collateral in nature, in any event.

Q Would you get paid in certain cases even if there were no arrests made?

MR. SANTANGELO: Objection. It is hypothetical.

Q Did you get paid in certain cases if no arrests were made?

MR. SLOTNICK: Objection, your Honor.

THE COURT: He may answer.

Q Did you get paid if no arrests [illegible]

A Yes.

Q Agent McElroy paid you; correct?

A Yes.

Q At the time you met Morell and Bruzon did you have any cases pending?

A No.

Q Any arrests outstanding?

A No, sir.

MR. SLOTNICK: This is direct. There is no reason to go into this on redirect.

THE COURT: Yes, there is no rehabilitation necessary.

Q Did you get paid for testifying here today?

A No.

Q Did myself or Agent McElroy or any agent or official of the Government make threats, promises or inducements to get you here from Central America to testify?

A No.

MR. SLOTNICK: Objection.

THE COURT: I will allow it.

Q Do you get paid by the Drug Enforcement Administration any more for coming here?

A No.

Q You told us that you knew a man named Luis and he introduced you to Pedro and Ramon?

A Yes.

Q Do you know a man named Luis?

A Yes.

Q Do you know where he is today?

A No.

Q What type of business was he involved in?

A TV repair.

Q Where was it located?

A Queens.

Q How did you meet him?

A Once in a store when I fixed my television there.

Q Did you have conversations with him?

A For a few minutes.

Q Concerning what?

A That he can trust me. I am a big shot there. He knows somebody in business in cocaine; that he know a lot of people. He says "I know somebody to introduce you to." I said, "Okay."

Q Did you meet him at a later date?

A A couple of days after. I asked did he know

somebody and he said, "Not yet."

Q Did you meet him with Pedro and Ramon?

MR. SANTANGELO: Objection. It has been gone over.

THE COURT: Yes.

Q Where did you see him with Pedro and Ramon?

MR. SANTANGELO: Objection, your Honor.

THE COURT: Sustained.

Q Do you know anything about Luis today?

A No.

MR. SANTANGELO: Objection.

THE COURT: You may answer that.

Q Do you know anything about Luis today?

MR. SLOTNICK: It is a poorly framed question and it calls for a hearsay answer.

THE COURT: He told us he hasn't seen him.

Q Have you any contact with him?

A No.

Q There have been questions on cross-examination about the fruit business.

When you came to the store in May of 1972 tell us what you saw with respect to any fruit business.

A It was on the ground floor, fixed out for a fruit store. You got a couple of apples, a few banana and I see a

couple of potato.

Q Tell us how many bananas you saw.

A Six or seven.

Q How many apples?

A About ten or eight.

Q How many -- any peaches there or plums or oranges?

A No.

Q Any grapefruits?

A I don't remember if at that time he had a couple of them there.

MR. SLOTNICK: I think we are throwing out irrelevant things.

Give me a date where there were no grapefruits.

THE COURT: Yes, I don't think this is necessary.

MR. KAPLAN: It has been opened up.

THE COURT: Are you going to go through the whole range of fruits? A man who goes to a fruit store wouldn't remember if there were grapefruits there yesterday.

Q How long did you stay?

A Two or three minutes.

Q On each occasion?

A Yes.

Q When you got there was it open or closed -- the store?

A Oh, it was just closing. No lock the door but it was closing.

There was paint in the basement downstairs.

Q When you, Pedro and Ramon were there how were they dressed?

A In work clothes.

Q Explain what you mean.

A When he finished the job he changed his clothes so he put it nice in there and then went home.

MR. SLOTNICK: Objection to "nice."

Q Paint clothes like sweat clothes?

A Yes.

Q Was there paint on the clothes?

A Yes.

Q Did you see Ramon and Pedro in the store on each occasion?

A Yes.

Q Were there customers there?

A I didn't see a customer there.

MR. SLOTNICK: We are going back to direct.

THE COURT: I don't know where we are going now.

Q Did you make a statement to Agent McElroy on

June 15 and tell us if you can recall, did you write out the statement or tell it to him?

A I told him. I cannot write.

Q What was he doing when taking the statement from you?

A The agent?

Q Yes.

A He typed it for me.

Q He typed it up for you?

A Yes.

Q You were married in 1972, were you?

A Yes.

Q What did your wife do?

A She working.

Q What kind of job did she have?

A Long Island, Siranco Company.

Q What was her position there?

A She work in a factory.

Q How much did she make a day or week?

A A hundred a week.

Q You said you had odd jobs during the year of 1972, extra jobs?

A Yes.

Q What kind of extra jobs?

A Work, carpentry.

Q What else?

A I know how to work plumbing.

Q This is other than the parking lot business?

A Yes.

Q You got paid for those extra jobs?

A Yes.

MR. KAPLAN: May I have a few minutes, your Honor?

THE COURT: Yes.

(Pause.)

MR. KAPLAN: Nothing further.

THE COURT: Any other questions?

MR. SLOTNICK: Very few.

THE COURT: I would say so.

MR. SLOTNICK: I will keep my word.

RECROSS-EXAMINATION

BY MR. SLOTNICK:

Q When did you first start working with Agent McElroy? Do you remember?

A I can't remember the exact date or month.

Q The year? Let's try that.

A 1970.

Q When you got paid from Agent McElroy and no

arrest resulted -- how many times did this happen?

A Excuse me?

Q How many times did you get paid from Agent McElroy without an arrest?

A I don't understand what you say.

THE COURT: He wants to say, when you got paid with no arrests, how many times did that take place?

THE WITNESS: When I don't make the arrest I don't get paid.

MR. KAPLAN: That's not the testimony.

THE COURT: Do you understand the question? When there was no arrest did you get paid?

THE WITNESS: Oh, yes.

Q How many times did that happen?

A I don't remember how many times.

Q Do you remember how much you got paid for no arrests?

A I can't remember exactly.

Q Well, let's try approximately. Do you remember approximately?

A I think twice.

Q And did you get paid $50?

A Maybe more.

Q Maybe more.

Well, how about $100?

A For expenses.

Q So, all you got paid was money -- look at me, Mr. Valdez -- all you got paid was money you had expended.

In other words, if you were working on a case for the agent --

A Oh, no, no --

Q We are talking about no arrests now.

MR. KAPLAN: I ask the question be withdrawn. It is a double question. It is impossible to answer it. It is a statement.

Q Look at me, Mr. Valdez. It is easier to understand me if you look at me instead of the agent --

MR. KAPLAN: Objection.

THE COURT: Let's go on.

Don't block the jury.

MR. SLOTNICK: I am sorry, your Honor.

Q When you got paid and there was no arrest -- that happened how many times?

A Maybe twice.

Q You got paid for the money that you spent out of your own pocket; is that right?

A Yes.

Q In other words --

THE COURT: No, not "in other words."

Q You got paid no other money; is that correct?

THE COURT: He didn't say that.

MR. SLOTNICK: He just said that.

MR. KAPLAN: I object to the form "You got paid no other money." It is impossible for an English-speaking person to understand.

MR. SLOTNICK: You do.

Q Did you get paid for anything else other than what you laid out of your own pocket when there were no arrests?

THE COURT: Did you get paid for your time?

THE WITNESS: Yes.

Q How much did you get paid the first time when there was no arrest?

A I can't remember exactly. I never kept a record.

Q You never kept a record?

A No.

Q Well, not exactly, but try to tell us approximately how much you did get paid.

MR. KAPLAN: Objection. We keep going over this.

THE COURT: He said he can't remember.

MR. SLOTNICK: He says he can't remember exactly.

THE COURT: Can you remember how much you got paid?

THE WITNESS: I can't remember.

THE COURT: All right.

Q Now, let's take the second time that no arrest happened. How much did you get paid, approximately?

A I say I can't remember.

Q Was it a thousand dollars?

A I can't remember.

Q Ten dollars?

A I can't remember.

Q That's good enough --

MR. KAPLAN: Objection to these comments, your Honor.

Q Now, last night when you left the witness stand did you have a conversation with anybody with regard to somebody you called Louis?

A Excuse me?

Q Last night --

THE COURT: He will never understand that question, never.

Q When you left the witness stand yesterday --

A Yes --

Q (Continuing) -- you spoke to the United States

Attorney and the agents?

A Yes.

Q And another agent?

A Yes.

Q Did you talk to them about somebody you called Louis?

A You ask for "Who is Louis?"

Q Who asked you that, the agent?

A No.

Q The United States Attorney?

A He asked me to tell him the truth.

Q He didn't believe you, did he?

THE COURT: Objection sustained. Strike it out.

MR. KAPLAN: That is incredible.

Q He asked you to tell him the truth about Louis?

A Yes.

MR. SLOTNICK: Nothing further.

MR. KAPLAN: I have a few questions, your Honor.

REDIRECT EXAMINATION

BY MR. KAPLAN:

Q What did I tell you to say about Louis in the courtroom today?

A Well, you said "Who is Louie?" And you said, "Tell me the truth," and I said, "I don't know where he lives or his real name."

Q That is what you told me yesterday?

A Yes.

MR. KAPLAN: Nothing further.

THE COURT: You may step down.

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MR. KAPLAN: The Government calls Agent Scharlatt.

THE COURT: Come to the side bar.

(Side bar discussion)

THE COURT: Is this your last witness?

MR. KAPLAN: Yes.

I would think your Honor wants to keep the witness in the country.

THE COURT: Oh, sure.

MR. KAPLAN: Do you want to finish the case today?

THE COURT: What do you think?

MR. SLOTNICK: I'd like to.

MR. SANTANGELO: I'd like to.

THE COURT: Well, we have those two jurors -- well, how many witnesses do you have?

MR. SLOTNICK: Three or four.

MR. KAPLAN: It depends if they are character witnesses --

MR. SLOTNICK: Three character witnesses and possibly a substantive witness.

MR. KAPLAN: This witness won't take long.

MR. SLOTNICK: This should finish by lunch.

With regard to the two Sabbath observers, I

have no objection to dismissing them.

MR. KAPLAN: Let's ask them.

THE COURT: All right.

(Conclusion of side bar discussion)

(Following held in open court)

THE COURT: What time would you have to be home today?

JUROR NUMBER TWO: About four thirty, a quarter to five.

THE COURT: Well, we can't guarantee that. We'll see what happens and continue for now.

MR. KAPLAN: Agent Scharlatt.

J E F F R E Y I. S C H A R L A T T, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record.

THE WITNESS: Jeffrey I. Scharlatt, S-c-h-a-r-l-a-t-t.

DIRECT EXAMINATION

BY MR. KAPLAN:

Q By whom are you employed?

A The Drug Enforcement Agency.

Q In what capacity are you so employed?

A Supervisory agent.

Q For how long have you been so employed?

A Seven and a half years.

Q Were you so employed in 1972?

A Yes sir.

Q What is your current position in the Drug Enforcement Administration?

A I am a group supervisor.

Q Explain what that means.

A I supervise between eight and fifteen New York City agents and police officers in their every day activity.

Q I refer your attention to May 25, 1972. Do you recall that date?

A Yes.

Q What duties did you perform on that date?

A I was acting Special Agent in charge of the Westbury district office of the Bureau of Narcotics and Dangerous Drugs, at that time.

Q Did there come a time when you instituted a surveillance?

A Yes.

Q Approximately where was that?

A It was in Jackson Heights, Queens.

Q Do you have the exact address?

A 90-19 31st Avenue, I believe.

Q Other than yourself, who was present at the surveillance of the premises?

A Several agents and two Nassau County District Attorney Investigators.

Q How many agents would you say?

A Several. I would think ten or twelve. I'm not sure.

Q Prior to instituting surveillance did you perform any duties with respect to this case?

A Yes.

Q What did you do?

A I interviewed an informant of the Bureau of Narcotics.

Q Please give us his name.

A Alfredo Valdez.

Q Did you perform any duties other than conversations that you had at that time -- together with other agents?

A Yes. I gave him instructions as to how to proceed --

MR. SLOTNICK: Objection.

THE COURT: Sustained.

Q Other than statements you had or conversations you had with Mr. Valdez, what if anything did you and fellow

agents do with respect to Mr. Valdez at that time?

A I gave him $48,000.00, official Government funds in a black attache case.

Q What else did you do?

A Met him in Jackson Heights, Queens and followed him to a location where he was to purchase cocaine.

Q Did you supervise anything else?

A Yes, a search that agents McElroy and Stromfeld made of a search of the vehicle for contraband.

Q You searched his person as well?

A I supervised the search. I didn't personally do it.

Q What happened when you got to the premises in question and approximately what time was it?

A The first time I got there it was approximately quarter to four but I returned to see the informant and went back a second time to the premises and that was about 4:40.

Q Tell us what you observed?

A The second time I was there?

Q Correct.

A I saw Valdez park his vehicle in front of the store in question and go inside.

Q Approximately what time was that?

A About 4:40 in the afternoon.

Q On May 25?

A Yes sir.

Q What did you observe?

A I observed him go inside and subsequently I observed him come out and he was accompanied by one of the defendants, Mr. Morell.

Q Pedro Morell?

A Yes sir.

Q Can you identify him in the courtroom?

A Yes sir, the gentleman at the end of the table.

THE COURT: Describe him.

THE WITNESS: Blue suit, light blue shirt.

MR. SLOTNICK: We stipulate that he has identified him.

Q When he came out, describe the scene.

A Mr. Valdez came out first. Behind him, Mr. Morell. Mr. Valdez went to the trunk of the vehicle and when he got there Mr. Morell went back inside the store.

Q When the trunk was opened what did you observe?

A Mr. Valdez took out the attache case containing the $48,000.00 and went back slowly toward the store.

Q What if anything did you do?

A I proceeded in the direction of the door of the store along with other agents and as Mr. Valdez entered I

entered behind him with several other agents.

Q What duties did you perform at that time?

A Upon entering the store I saw that Mr. Morell had been place under arrest and I proceeded to the basement.

Q You say you entered the store. Describe to the members of the jury what type of store we are talking about.

A It was a store that looked more like a warehouse type of arrangement than open for the public with paint cans and other things in disorder.

Q Explain the condition of the store -- physical condition?

A I don't know what you mean by "condition".

Q Was there any furniture there and how was the lighting?

A I don't recall lighting. It was light. You could see without a problem.

There was no furniture. It was not a regular store. It didn't look like an office or store.

Q Was Mr. Valdez the only person in the upstairs premises at this time?

A Yes, with a couple of other agents.

Q What did you do?

A I went to the basement.

Q How did you proceed?

A There was stairs and I followed two other agents downstairs.

Q How did you get to the stairs?

A There was a trap door.

Q Was it open or closed?

A When I got there it was open.

Q You proceeded down the stairs?

A Yes.

Q What did you observe?

A The other defendant, Mr. Bruzon, just approaching the back door, running and Agent Sears was behind him.

Agent Sears, I think he yelled "police" and I attempted to catch Mr. Bruzon along with the other agents.

MR. SLOTNICK: Objection to "catch."

Q Describe what he was doing.

A Running toward the back door trying to get out.

THE COURT: Objection sustained.

"Running toward the back door." The balance is stricken.

Q What did you observe?

A Agent Sears pursuing him out the back door followed by Agent Schnepper and I was informed --

THE COURT: No. You cannot tell us that.

A That's all I observed.

Q Prior to the time you proceeded downstairs were there any conversations that took place upstairs?

A Yes.

Q What was it?

A Mr. Valdez yelled, "God damn, God damn" which meant, go to the basement.

Q Describe the downstairs premises.

A Typical basement but there were paint cans and other things strewn about.

Q What did you see, if anything?

A In the basement?

Q Yes.

A I saw bags with white powder and a shopping bag containing bags with white powder.

Q Where were the bags containing the white powder located?

A Right in the front of the basement on the floor.

Q When did you observe it?

A When I was walking back to the stairs to go upstairs I observed the bags of white powder laying on the floor.

Q How many, if you recall?

A I don't recall but quite a few; seven or eight, maybe more.

Q What did you do?

A Went over and inspected them more closely.

By this time there were other agents downstairs and I asked Agent Culver to take photographs of the white powder before I moved them.

Q I show you Government's exhibit 1 in evidence and I ask you if you can identify this photograph?

A Yes sir.

Q Tell the members of the jury what you observed when the photograph was taken.

In other words, explain the photograph to the members of the jury.

A This is a photograph taken by Agent Culver at my direction.

This is what the basement area looked like with the white powder in the bags as I found it before I touched it.

Q Did you have occasion to make a seizure of the evidence contained therein?

A Yes.

Q What did you do when you seized it?

A It was transported by other agents and myself to 90 Church Street and back to Westbury district office where it was put in a safe until it was taken to the United States chemist.

Q Did you have occasion to initial the bags in

question?

A Yes sir, that is correct.

THE COURT: We will take a recess at this point and we should start again at two or 2:15. Two fifteen, more than likely.

You may step down.

THE WITNESS: Thank you.

(Luncheon recess taken)

(AFTERNOON SESSION)

(Jury not present)

MR. SANTANGELO: Your Honor, Mr. Leonard Hetson, a character witness for the defendant, is here in court now. He was here yesterday on the supposition that he would testify and then he could go. It's very inconvenient for him and I would ask if the Government would consent and the Court would allow him to be placed on the witness stand out of turn.

THE COURT: A character witness?

MR. KAPLAN: Your Honor, we will be finished in a few minutes. It breaks up the whole Government's case.

THE COURT: Wait for ten or fifteen minutes and then I'll put you on.

MR. KAPLAN: I would ask for the exclusion of any other witnesses other than character witnesses at this time.

MR. SLOTNICK: Other than the wives.

MR. KAPLAN: There are no other witnesses?

MR. SLOTNICK: No.

MR. KAPLAN: Do you make that representation?

MR. SANTANGELO: Yes.

THE COURT: Are the wives going to testify?

MR. SLOTNICK: I don't believe so.

THE COURT: I would think not.

MR. KAPLAN: Your Honor, there's been a stipulation and there's just a couple of more questions.

THE COURT: Have you got the stipulation in?

MR. KAPLAN: I offer the stipulation in evidence and I ask that it be read to the jury.

THE COURT: All right.

MR. SANTANGELO: No objection.

MR. SLOTNICK: No objection.

MR. KAPLAN: Also, your Honor, the bags containing the white powder are offered in evidence at this time, your Honor, pursuant to stipulation.

THE COURT: That if the chemist were called he would say it is cocaine.

MR. KAPLAN: That's right.

MR. SANTANGELO: So stipulated.

MR. SLOTNICK: So stipulated.

Would you make it a point to indicate whether the original bag is there or not?

MR. SANTANGELO: I think Agent Scharlatt can

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testify as to whether that's a Bureau covering or the original bags.

AGENT SCHARLATT: They are the original bags.

MR. SLOTNICK: Including the top bag?

AGENT SCHARLATT: Yes. I looked at it close. My initials are on it.

MR. SLOTNICK: The yellow rubber band?

AGENT SCHARLATT: That, I don't recall.

THE CLERK: Bags of cocaine marked in evidence as Government's exhibits two through seven.

(So marked)

MR. KAPLAN: Eight and nine being boric acid in evidence.

THE CLERK: So marked.

Stipulation marked in evidence as Court exhibit 1.

(So marked)

THE COURT: Bring in the jury.

(Jury entered jury box at 3:10 p.m.)

THE COURT: All right, ladies and gentlemen.

In the interim, there have been certain concessions made and they will be given to you in a short while.

J E F F R E Y I. S C H A R L A T T, having

been previously duly sworn by the Clerk of the Court resumed the witness stand and further testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN CONTINUING:

Q This morning we were talking about the seizure of the plastic bags containing the white substance.

Have you examined the plastic bags marked 2 through 9 during the recess?

A Yes.

Q Can you identify them?

A The bags and the white powder was seized by agents and myself on the day in question.

Q What became of them?

A They were taken to Westbury and later taken to the chemist for analysis.

MR. KAPLAN: May I read the stipulation?

THE COURT: Yes.

MR. KAPLAN: This is a stipulation entered into by myself, the attorney for the Government and the attorneys for the defendants.

It is hereby stipulated to and agreed that if a chemist of the Drug Enforcement Agency were called to testify he would testify that exhibits

1, 2, 3, 4, 5, 6 and 7, being these plastic bags here, are or is a white powder containing cocaine hydrochloride, a Schedule II narcotic drug controlled substance having a total net weight of 3,867 grams and that exhibits 8 and 9, these two bags here, are boric acid.

Number two, these exhibits 2 through 9 in evidence have remained in the exclusive custody and control of the Bureau of Narcotics and Dangerous Drugs known as the DEA and were retained by them until their production in court today and it is signed by the parties.

THE COURT: Now, you understand that the parties agree that it has been identified as the substance taken from the premises without of course, conceding that these defendants had anything to do with it.

MR. KAPLAN: Nothing further.

THE COURT: You may examine.

By the way, members of the jury, sometimes it is worthwhile that you sit there while other things are done.

CROSS EXAMINATION

BY MR. SLOTNICK:

Q About what time did you see the informer Valdez enter the store?

A About 4:40 in the afternoon.

Q About 4:40 in the afternoon.

When was the next time you saw the informer Valdez?

A Approximately a half hour later.

Q Now, what did you see him do?

A I saw him come out --

Q When you first saw him step out of the store was he with anybody?

A Yes, behind him was another individual.

Q Who was that individual?

A Mr. Morell.

Q Mr. Morell.

And how far did Mr. Morell walk in a straight line?

A How far out from the door did he come?

Q Yes.

A Six feet, five feet.

Q Six feet out --

A He stood there and watched --

Q Please, don't say "He watched." That's a conclusion.

MR. KAPLAN: Objection. He is obstructing the witness.

Q What did you see him do?

A He walked out approximately that distance from the door and stopped.

Q That is the middle of the sidewalk; correct?

A All right, but it wasn't even quite the middle of the sidewalk.

Q Was it a May day -- a day in May?

A Yes.

Q Balmy and warm?

A Yes, I think it was.

Q He walked out six feet and then?

A Stood there.

Q And then?

A He went back in the store.

Q And shut the door?

MR. KAPLAN: Objection. He is trying to sneak it in.

THE COURT: No. Some lawyers have a habit of asking questions that way.

Q After he turned around what did you see him do?

A After he turned around -- now, he is in the store?

Q He is in the street and he turns around.

A He went back in the store.

Q Did he shut the door?

A I don't recall.

Q Did you see him at any time walk up to the trunk of the Valdez car with Valdez?

A No sir.

Q You're sure of that?

A I'm sure of that.

Q Where was Valdez's car parked?

A In front of the store.

Q In front of the store?

A Yes.

Q My client didn't walk up to that trunk with him, did he?

A No sir.

Q When you entered the store there were other agents who had entered before you?

A Yes.

Q You observed my client under arrest?

A Yes.

Q Leaning up against the wall being searched and patted down?

A I don't recall but that's standard procedure.

Q Then you went downstairs?

A Yes sir.

Q Now, did there come a time that afternoon when you went to the home of my client?

A Yes sir.

Q When was that?

A It was later in the afternoon or early evening. I don't recall the time.

Q About what time, if you recollect?

A I can only say it was after I had left the store. I don't recall the time.

Q Where was my client?

A In custody.

Q You went to his house?

A Yes.

Q What did you do at his house?

MR. KAPLAN: Objection. Irrelevant.

THE COURT: There is no question involving this on direct.

MR. SLOTNICK: It is totally relevant.

THE COURT: It is outside the scope of direct examination.

MR. SLOTNICK: Correct, but it is relevant to the res gestae of the crime.

THE COURT: I will allow one or two questions.

Q Did you go to my client's house and search it?

A Yes.

Q Did you find anything?

A Contraband?

Q Yes.

A No.

Q Were you allowed to search my client's house by his wife?

MR. KAPLAN: Objection.

THE COURT: I will sustain the objection.

Q Who was there when you went to my client's house?

MR. KAPLAN: Objection.

THE COURT: Sustained.

Q Was it a house or an apartment?

A An apartment.

Q And you found no contraband?

A No.

Q Were you alone or with other agents?

MR. KAPLAN: Objection.

THE COURT: You are playing this like a football game when they say "five yards to go on the last down."

Q When you were in the basement and identified this photograph --

MR. SLOTNICK: If anyone has it, may I have the photograph?

(Photograph handed to counsel)

Q (continuing) Can you identify this photograph?

A Yes sir.

Q Is it a fair representation of what you saw on the day of the arrest?

A Yes sir.

Q Isn't it a matter of fact, that before that was taken, something was done in order to show what was on that floor?

A Correct.

Q Tell the jury what was done before the photograph was taken.

A In order to take the photograph more clearly I had someone remove a hammock hanging approximately three feet over the evidence.

Q When you were in that basement and first sighted whatever these things are, there was a hammock hanging over them?

A Yes.

Q And you took the hammock away and it is not shown in the photograph?

A Yes.

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Q Did the hammock partially hide it?

MR. KAPLAN: Objection.

Q Did you observe that the hammock obstructed the view?

MR. KAPLAN: Objection to form.

MR. SLOTNICK: I withdraw the question.

Q You are or you have been a federal narcotics agent for how many years?

A About seven and a half years.

MR. SLOTNICK: Is it stipulated that he is an expert as to narcotics?

MR. KAPLAN: So stipulated.

Q Are you aware of a procedure whereby a number of your Bureau vacuums an area to pick up cocaine tracings?

A Yes.

Q You are very aware of that?

A Yes.

Q Isn't it true that the slightest trace of cocaine could be analyzed to determine if it exists?

A I would think so. I'm not a chemist.

Q And in your experience you vacuum clothes and rugs and areas; correct?

A Yes sir.

MR. SLOTNICK: Nothing further.

Oh, one last question.

CROSS EXAMINATION

BY MR. SLOTNICK CONTINUING:

Q Did you vacuum my client or his house?

A No sir.

CROSS EXAMINATION BY

MR. SANTANGELO:

Q I show you a picture marked defendant's B for identification. Can you identify it?

A Yes.

Q What does it represent?

A The upstairs of the store in question.

Q Is that a fair representation of the store in question on the day of the arrest, May 25?

A I think it was a little more cluttered but it certainly looks like the store itself.

MR. SANTANGELO: I offer it in evidence.

(Document shown to Government counsel)

MR. KAPLAN: Objection, your Honor, on the ground that this is not the way the premises appeared on the day in question.

THE COURT: He said he recognized it.

MR. KAPLAN: He said it was more cluttered and this picture wasn't taken that day.

THE WITNESS: It looks like the store but as far as what is in it, I can't tell.

MR. KAPLAN: He doesn't know if the objects in it --

MR. SANTANGELO: I'll ask him.

THE COURT: It is marked.

Q You remember the refrigerator?

A Honestly not. I remember the trap door going to the basement and that makes me think it is the store.

Q That trap door in that store opened up to a stairway; correct?

A Yes.

Q And the stairway proceeded toward the front of the store; correct?

A Yes sir.

Q So when you came to the end of the stairway you were in effect, facing toward the street?

A Just a wall.

Q Could you turn left?

A I don't think so.

Q So, you had to turn right?

A Yes.

Q There would be nothing on the left side of the stairway?

A I think there was a wall there.

Q I ask you to identify this picture if you can.

A It could be the basement of the store -- and the reason I say that is because you showed it to me before -- but I can't really identify it. It looks like a basement with some painting.

THE COURT: Don't guess.

THE WITNESS: I could not say it was the same store. I'm sorry.

THE COURT: All right. He doesn't recognize it.

Q Now, you observed those plastic bags as you were walking toward the front of the basement; correct?

A On the way from the back to the front, correct.

Q Was there anyone between you and the bags when you observed them?

A No sir.

Q But there were other agents behind you; correct?

A Yes.

Q Is it not a fact that Agent Sears, Agent Sheehan and Agent Schnepper were behind you?

A I recall Sears and Schnepper. I don't recall Sheehan. He may have been. I don't remember.

Q If I show you a copy of a report would you see if that refreshes your recollection?

(Document handed to witness)

A Well, it says Sheehan was in the basement and pursued the defendant --

Q Don't tell me what it says. Just tell me if it refreshes your recollection.

A It just shows me it was written.

Q But you remember Sears and Sheehan being down there?

A No, Sears and Schnepper.

Q And Sheehan could have been down there?

A Yes sir.

Q Now, when you entered the ground floor of the premises, didn't Agents Sears, Schnepper and Sheehan precede you down the stairs?

A I recall Sears and Schnepper. Sears was directly in front of me and Schnepper a few steps ahead.

Q Sheehan could have preceded you?

A He could have.

Q When for the first time did you see Ramsey?

A When I turned right after hitting the bottom of the stairs.

Q Where was Agent Schnepper in relation to you?

A Two or three feet.

Q And Agent Sears?

A Further away.

Q Ten or fifteen feet?

A Could be.

Q Was there a long hallway going toward the back of the store?

A Yes.

Q How wide was it?

A I don't recall, sir.

Q Would you say about this wide (indicating) -- four feet?

A I have no recollection of how wide it was. I'm sorry.

Q Was Agent Sears in that hallway?

A I only know he was heading toward the back of the store. If there is a hallway toward the back he must have been in that hallway.

Q Were you ever in that hallway?

A Yes sir.

Q When you saw the defendant Ramon, was the door open, to the back of the store?

A Yes sir, I believe it was.

Q Then, did you see him going up the stairs toward the backyard?

A I think that's where I first saw him -- on the

stairs.

Q Did you hear someone say "Police, stop"?

A Yes sir.

Q Subsequently, was Mr. Ramon apprehended, arrested?

A Mr. Bruson, yes.

MR. KAPLAN: May we have the name correct on the record. He calls him Mr. Ramon.

Q About how long after someone said "Police, stop" was he arrested -- a couple of seconds?

A Maybe ten or five seconds.

Q You didn't see him get arrested?

A No. He was in the back yard.

Q You turned around and walked back?

A Yes.

Q Do you know who arrested him?

A I don't know who it was.

Q Was anyone in the back yard?

A Yes.

Q Agent Culver was in the back yard?

A Yes.

Q Do you know if he arrested him?

A No.

Q Did you see my client, Mr. Bruson, after he was arrested?

A Certainly.

Q Could you describe how he was clothed?

A In a pair of work pants and a sweatshirt.

MR. SANTANGELO: May I have the mug shot, Mr. Kaplan?

(Photograph handed to counsel)

Q I show you this picture and I ask you if that is not a fair representation --

MR. KAPLAN: It is not marked, your Honor.

MR. SANTANGELO: I'm sorry.

Mark it for identification, please.

THE CLERK: Document marked for identification as defendant's exhibit C.

(So marked)

Q I show you defendant's exhibit C and ask you is that not a fair representation of what the defendant Bruzon looked like on the day he was arrested?

A Yes sir.

MR. SANTANGELO: I offer it in evidence.

MR. KAPLAN: No objection.

THE CLERK: Defendant's exhibit C previously marked for identification marked in evidence.

(So marked)

Q Now, after Mr. Bruzon was arrested did you talk

to him at all?

A I don't think so.

Q Were you near him?

A Yes sir.

Q How close?

A At different times I was close and then far away.

Q How long a period of time were you with him either at the store or at your headquarters?

A I would say, overall, it had to be a few hours.

Q You viewed what he looked like?

A Yes.

Q Did you see white powder on his pants or shirt?

A There was white on him. I don't know if it was powder or what it was.

Q If it was powder --

MR. KAPLAN: Objection.

THE COURT: Sustained.

Q Did you think it was white powder?

MR. KAPLAN: Objection.

THE COURT: Sustained.

Q Did you see any powder on him?

A I don't know if there was powder on him.

Q You were here this afternoon as these exhibits were being taken out of the envelopes?

A Yes.

Q Agent McElroy took them out?

A Yes.

Q Did you help him?

A No.

Q As he took them from here and placed them on the table, some of the powder spilled on the table, didn't it?

A Yes.

Q And it's still here, these little exhibit spots?

A Yes.

Q And all those packages are tied with rubber bands, tightly?

A They are tied with rubber bands.

Q Did you tie them with rubber bands?

A I don't know. I'd have to look at a RMD 7 to see if I put the rubber bands --

MR. KAPLAN: These questions are irrelevant.

THE COURT: It doesn't make a difference. If you say it is on the table, then it is.

MR. SANTANGELO: All right. The jury can see it, your Honor.

Nothing further.

RE-DIRECT EXAMINATION

BY MR. KAPLAN:

Q How many feet would you say Morell, Peter Morell was, from the trunk of the car?

A Ten.

Q Closer than me to you at this point?

MR. SLOTNICK: I think the agent is qualified to know what ten feet is.

Q Closer?

A Closer.

THE COURT: Ask him what ten feet is.

THE WITNESS: From here to the table.

THE COURT: Leading edge.

Q He was this far away from the trunk of the car?

A About right.

THE COURT: I don't have that dimension so I can't help you out.

Whose got a twelve foot --

MR. SLOTNICK: I will stipulate as the naked eye --

THE COURT: I would say it's twelve feet.

THE WITNESS: You may be right.

Q When you saw the hammock in the basement where was it with respect to the materials layed out on the floor?

A It was strung out over the basement floor.

Q In the air?

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A Yes.

Q When you walked back did you see the materials on the floor?

A Yes.

Q Without taking off the hammock?

A It didn't obstruct my view at all.

Q And how far above the ground was it?

A About three feet above the ground.

Q I'm going to show you defendant's exhibit -- it looks like C in evidence -- can you tell from the picture or from your own personal recollection or knowledge about Mr. Bruzon's clothes, whether those white splotches contained cocaine or were they paint or you don't know?

A I don't know.

MR. KAPLAN: Thank you.

MR. SLOTNICK: One or two questions--

THE COURT: One or two questions.

MR. SLOTNICK: One or two questions that I forgot to ask.

RE-CROSS EXAMINATION

BY MR. SLOTNICK:

Q As an expert you are involved with the vacuuming of individuals suspected of drugs?

A Never an individual, only of a room drugs were

suspected to be in.

Q When you went to my client's apartment did you go with a chemist?

MR. KAPLAN: Objection. Irrelevant.

THE COURT: We are not going to try that.

Q Did you, as a supervisor, have the power and authority to order a vacuuming in this case?

MR. KAPLAN: Objection. Irrelevant.

MR. SLOTNICK: It is relevant. It was brought out on re-direct.

A I could ask for it.

Q Did you ask for it?

A No.

Q Hypothetically speaking, as an expert --

MR. KAPLAN: Objection.

THE COURT: Sustained.

Q If you observed a suspect who you believed had drugs or powder over his person and he was in your custody would you generally speaking, order a vacuuming or examination of that clothing?

MR. KAPLAN: Objection.

THE COURT: I will allow it.

A I think, rather than a vacuuming, I'd take the clothes and keep them in evidence.

Q Did you take the clothes of Mr. Bruzon and Mr. Morell?

A No sir.

Q Did you take anything from the apartment of Mr. Morell?

MR. KAPLAN: Objection.

May I?

MR. SLOTNICK: I'm not finished yet.

THE COURT: You have another question?

MR. SLOTNICK: I had one.

THE COURT: That's what I thought.

MR. SLOTNICK: I have to remember it.

Well, I'll let it go at that. I forget it.

MR. SANTANGELO: I have a couple of questions.

THE COURT: There are not too many "couples" left. You reach a point of no return.

RE-CROSS EXAMINATION

BY MR. SANTANGELO:

Q A stipulation has been read in evidence that these exhibits contain three thousand eight hundred seventy-six grams net weight.

A Yes.

Q Are all three thousand eight hundred seventy-six grams pure cocaine or mixed with something else?

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A Mixed with something else.

Q If I show you the report of the chemist can you estimate approximately how much in these bags is not cocaine?

A I think so.

MR. KAPLAN: I object to the form of the question as to what is not cocaine.

If it's all mixed together it is --

THE COURT: It is cut cocaine.

MR. KAPLAN: If he asks how much is not pure cocaine --

MR. SANTANGELO: All right -- not pure cocaine.

THE COURT: What is the percentage?

THE WITNESS: There are different ones on different exhibits.

Q Let's go to the first one.

THE COURT: It doesn't make a difference. It's a question of a controlled substance under the law. It doesn't matter if it was cut to two percent.

MR. SANTANGELO: I agree and that's not my purpose. It will become clear.

Q On the first bag what is the total net weight?

A Nine hundred and sixty-four grams.

Q And what was the percentage as the chemist found,

of cocaine?

MR. KAPLAN: Pure cocaine.

Q What did the chemist say was pure cocaine?

THE COURT: It's all useable.

A Twenty point seven percent of pure cocaine.

MR. KAPLAN: Your Honor, if he wants to offer the report in evidence I have no objection but if he is going to ask these kind of questions I object.

MR. SANTANGELO: I offer them in evidence.

THE COURT: Any other questions?

MR. SANTANGELO: I'll offer them as one exhibit.

THE CLERK: Reports marked in evidence as defendant's exhibit D.

(So marked)

MR. SANTANGELO: No further questions.

MR. KAPLAN: I have a few further questions.

THE COURT: Absolutely narrow it down to just that report. That's all that was asked.

MR. KAPLAN: And Mr. Slotnick's inquiries as well.

RE-REDIRECT EXAMINATION

BY MR. KAPLAN:

Q Under the circumstances of this case did you find it necessary to take Mr. Brussa's clothes or vessels --

THE COURT: He didn't.

It doesn't matter whether it was necessary or not. That doesn't follow.

The fact is, he didn't take them and you cannot change the facts in the case. That is why I say there are no more questions.

MR. KAPLAN: On the basis of the cocaine question --

THE COURT: No one wants to listen to the Court.

RE-REDIRECT EXAMINATION

BY MR. KAPLAN CONTINUING:

Q What do you mean by "pure cocaine"?

MR. SANTANGELO: Objection.

THE COURT: It makes no difference whether it was two percent cocaine and ninety-eight percent something else. What difference is it, if it is pure or not?

All right. Step down.

MR. KAPLAN: Your Honor, the Government rests.

THE COURT: Before we take the motions I

will permit you to put your witness on so he can go.

We are going to take one witness out of turn and then I will send you out to take the motions.

MR. SLOTNICK: Technically, it is not out of turn.

THE COURT: I haven't taken the motions yet.

All right. Come on.

Whose witness is this?

MR. SLOTNICK: Both.

L E O N A R D H E T S O N, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record, please.

THE WITNESS: Leonard Hetson, H-e-t-s-o-n.

DIRECT EXAMINATION

BY MR. SANTANGELO:

Q Mr. Hetson, by whom are you employed?

A I'm employed by the Purity Paint Products Corporation.

Q In what capacity?

A I am president of the corporation.

Q And were you president of that company in 1972?

A Yes sir.

Q How long before that had you been president?

A Since 1963, I guess it was.

Q And in your capacity with this company, did you come to know Mr. Bruzon or Mr. Morell?

A Yes sir, I know both of them.

Q How did you get to know them?

A I first met Mr. Morell in about 1968 or '69.

He was working as a sprayer, a painter for a company that had been using some of your materials. We manufacture paint.

Q When did you meet Mr. Bruzon?

A I met Mr. Bruzon about 1970, about two years later.

Q Did you know Mr. Bruzon and Mr. Morell in their capacity as painters in a painting concern?

A Later on, yes.

Q That was approximately when?

A About 1972, 1973 -- in that area.

Q Now, do you have occasion, as president of this paint company, to talk to people for whom Mr. Bruzon and Mr. Morell have worked and done jobs?

A Yes.

The people they have worked for I speak to almost on a, really, a daily basis.

Q Did there come a time --

MR. SANTANGELO: Withdrawn.

Q (continuing) Do you know the reputation of Mr. Bruzon and Mr. Morell for truth, honesty and lawfulness?

A My --

MR. KAPLAN: Objection. The question is not phrased properly -- what he has heard, not what he knows.

Q What have you heard concerning Mr. Bruzon and Mr. Morell's reputations for truth, honesty and lawfulness?

MR. KAPLAN: That's not a correct statement. It is veracity.

Q What have you heard as to their veracity, lawfulness and what have you heard about their truth, honesty and veracity?

A As far as I'm concerned in knowing the two gentlemen, one a period of about six years and the other approximately four years, and speaking to the many people they have done jobs for, worked for, been employed by, all along the line, they are hard working people. They are industrious, have been trustworthy and I can find no fault with them in any manner whatsoever.

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MR. KAPLAN: Objection.

THE COURT: Not what you find.

THE WITNESS: I withdrew that remark.

A (continuing) I meant in the sense that they were fine, upstanding citizens.

MR. KAPLAN: He is not allowed to testify to that.

THE COURT: That's what he says.

Q Did you hear or learn of the arrest of Mr. Bruzon or Mr. Morell?

A I don't know when it exactly took place.

Q But you heard about it?

A Yes, some months afterward.

Q In 1972?

A Approximately November, 1972.

Q After you heard about the arrest and the things you heard said about Mr. Bruzon and/or Mr. Morell, concerning their truth, honesty and veracity from people you spoke to about them, did those things change any? Did what they said about the two defendants change?

A Nothing from what I heard from anyone changed in any manner.

The several people that I spoke to felt absolutely no change whatsoever in their feelings as far as these two

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gentlemen were concerned.

MR. SANTANGELO: Thank you.

CROSS EXAMINATION

BY MR. KAPLAN:

Q Would it be fair to say that you, of your own personal knowledge have no information for us about the events of May 25, 1972 concerning the indictment in this case?

MR. SLOTNICK: Objection.

THE COURT: I will allow it.

A I didn't understand what you said.

Q Is it a fair statement that you, of your own personal knowledge, had no information or you had no knowledge of the facts of May 25, 1972?

A Well, I don't know how to exactly answer except to the extent of my own personal --

THE COURT: Your own personal knowledge.

Q You weren't there and observed nothing?

A Of course not.

MR. KAPLAN: No further questions.

RE-DIRECT EXAMINATION

BY MR. SLOTNICK:

Q After hearing about the arrest did that change the opinion of the community?

MR. KAPLAN: Objection.

THE COURT: He asked that.

MR. SLOTNICK: Not on behalf of my client.

Q Did it change the community's opinion?

A No.

Q What is their reputation today for truth, honesty and veracity?

A As I said before, both those gentlemen now as previously, are considered industrious, hard working citizens by those I have discussed them with.

MR. SLOTNICK: Thank you.

THE COURT: You may step down.

The jury will step out for a few minutes, please.

(Jury excused)

MR. SLOTNICK: On behalf of the defendant Pedro Morell I respectfully move that the Court grant a judgment of acquittal and I recite to the Court U.S. v. Pratt, a third circuit case indicating that a mere bystander to an area in which a narcotic drug was found or even a transaction occurred should be granted a judgment of acquittal.

As a matter of fact, in the Southern District, in a rather similar type case dealing with another

narcotic case, Judge Lasker granted an acquittal at this stage of the proceeding.

MR. SANTANGELO: On the same ground as stated by Mr. Slotnick, I move for a judgment of acquittal.

THE COURT: Motions are denied.

Do you have other witnesses?

MR. SLOTNICK: Yes, we do, your Honor.

Joseph Lima.

THE COURT: We have to call in the jury.

Is there any need to have the cocaine on the table? Let's bring it upstairs. It's a dangerous, dangerous thing to have in a courtroom. I keep preaching this. I don't know why judges permit it.

MR. KAPLAN: Can we put it back in the envelopes and the boxes? We have no place to secure it.

MR. SLOTNICK: The whole purpose of that is for the jury to look at it.

MR. KAPLAN: It is Friday night.

THE COURT: It's going to be kept someplace.

MR. KAPLAN: We have to have an agent to take it back. Agent McElroy is the only agent --

MR. SLOTNICK: You have an extra agent here

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and I will show you where the safe is in your office.

MR. KAPLAN: There is no safe and do not tell us how to run our office.

THE COURT: I don't see why it is here. It is white powder. The jury isn't going to touch it, feel it or do anything else. Why endanger everybody in the courtroom just to have it here? I don't like it in my courtroom.

MR. KAPLAN: Can we put it under here (indicating)?

THE COURT: No.

MR. KAPLAN: We'll put it back in the boxes.

THE COURT: Where is Agent McElroy?

MR. KAPLAN: He stepped out.

THE COURT: We are going to get it out of here.

MR. SLOTNICK: Let's put it back in --

THE COURT: Put it in the box now.

MR. KAPLAN: I'd like to wait for Agent McElroy.

MR. SLOTNICK: I'll help you.

MR. KAPLAN: You put it in the box.

THE COURT: (Addressing Agents McElroy

and Scharlatt) Agents, do you have a safe place to put that?

AGENT McELROY: I have to hold it.

MR. KAPLAN: There's not too much trouble in the state courts.

THE COURT: I don't want it in here.

MR. KAPLAN: Agent McElroy is fully armed.

THE COURT: That doesn't save the people who aren't.

MR. SLOTNICK: It is a dangerous substance Why have it around?

THE COURT: It doesn't save other people.

MR. SLOTNICK: Why can't he bring it out of the courtroom?

MR. KAPLAN: He has to guard it. I don't want him to be removed from this part of the case.

THE COURT: Once we start summations we will have it removed.

You have been before me before. It's my opinion. I don't see why anyone's life should be endangered.

MR. SLOTNICK: We have character witnesses and possibly the defendant but I can advise your Honor as to that at the last minute.

THE COURT: All right. Bring in the jury.

(Jury entered jury box at 4:00 p.m.)

THE COURT: We are now on the defendant's case and this is Pedro Morell's witness. This is a character witness.

MR. SLOTNICK: We call Joseph Lima as a character witness for both defendants.

J O S E P H L I M A, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record, please.

THE WITNESS: Joseph Lima, L-i-m-a.

DIRECT EXAMINATION

BY MR. SLOTNICK:

Q Mr. Lima, do you know the defendant Pedro Morell?

A Yes.

Q How long?

A About eight years.

Q What is your occupation?

A I was a painter with him at the beginning when we started and then I took bookkeeping and accounting courses and now I'm an insurance agent.

Q Are you studying for the certified public

accountant exam?

A Yes.

Q Have you done the books for Mr. Morell?

A Yes.

Q What business did you work with Mr. Morell in?

A The painting business, spray painting.

Q Do you know other people who know Mr. Morell?

A Some of the friends and company employees at the time we were together.

Q Did you have occasion to discuss his reputation for truth, honesty and veracity?

A Yes.

Q What is his reputation for truth, honesty and veracity in the community?

A Very good.

Q Have you had occasion to recently discuss his reputation for truth, honesty and veracity?

A Yes, no change.

Q Do you know Mr. Bruzon?

A Yes.

Q For how long?

A I knew him through Mr. Morell; four years, six years.

Q What is his reputation in the community for truth,

honesty and veracity?

A Very good.

Q Do you know the wives?

A Yes.

Q Have you seen the children?

A Yes.

Q Have you been to their apartment?

A Yes. We used to go out together too.

MR. SLOTNICK: Thank you.

Nothing further.

CROSS EXAMINATION

BY MR. KAPLAN:

Q You, of your own personal knowledge, no nothing about this case?

A Yes.

Q That would be fair to say?

A Yes.

MR. KAPLAN: Nothing further.

RE-DIRECT EXAMINATION

BY MR. SLOTNICK:

Q Do you know what Mr. Morell and Mr. Brunen are charged with?

A I heard about a case. It was a case.

Q In which they are charged with possession of,

what?

A Narcotics.

Q Has that changed the opinion of the community about them?

A No, no change.

THE COURT: All right. You may step down.

MR. SLOTNICK: Frank Garmendia.

F R A N K G A R M E N D I A, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record, please.

THE WITNESS: Frank Garmendia, G-a-r-m-e-n-d-i-a.

DIRECT EXAMINATION

BY MR. SLOTNICK:

Q Mr. Garmendia, tell the jury your employment.

A Administrative supply technician for the United States Army Reserve.

Q What is your rank in the United States Army?

A Second Lieutenant.

Q Do you know my client, Pedro Morell?

A Yes sir.

Q How long do you know him?

A Since 1966.

Q Do you know Mr. Brunson?

A I have known him by my acquaintanceship with Mr. Morell.

Q How do you know Mr. Morell?

A I met him at a baseball practice through a baseball team we had in the community. He came for a tryout and that's how we met.

Q Did you play on the same team together?

A Yes.

Q Do you know what Mr. Morell's reputation for truth, honesty and veracity is among his teammates?

A It's great.

Q What about the community?

A We don't live in the same community but some of the friends I met in his community thought a great deal of him.

Q Do you know he is on trial for possession of narcotics and conspiracy?

A Yes.

Q Has that changed your opinion or the community's opinion about him?

A No.

DIRECT EXAMINATION

BY MR. SANTANGELO:

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Q Do you know the reputation of Mr. Bruzon in the community for truth, honesty and veracity?

A As far as I know, it is the same as Mr. Morell's.

Q And you know he is being charged with narcotics?

A Yes.

Q And that hasn't changed his reputation?

A No.

Q You are a friend of Pedro and Ramon's?

A Yes.

Q Would it be fair to say you know nothing of the facts and circumstances of what happened on May 25, 1972?

A Only what I saw in the paper.

MR. SANTANGELO: Thank you.

MR. KAPLAN: No questions.

THE COURT: You may step down.

Any other witnesses?

MR. SLOTNICK: Pedro Morell.

P E D R O M O R E L L, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record, please.

THE WITNESS: Pedro Morell, M-o-r-e-l-l.

THE COURT: What time do you have to leave?

JUROR NUMBER NINE: Four thirty.

THE COURT: We are going to recess for the entire jury.

Step down.

I see no point in putting two alternates in the box only to have the rest of the jury come back.

Good night and don't talk about the case. Come back Monday morning.

(Jury excused for the day)

THE COURT: You will find out I'm a pro yet, Mr. Slotnick.

MR. SLOTNICK: Why couldn't we finish today?

THE COURT: No.

Good night.

(Court adjourned for the day)

* * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- : 72-CR-644

PEDRO MORELL and RAMON BRUZON, :

Defendants. :

----------X

United States Courthouse
Brooklyn, New York

March 4, 1974
10:00 o'clock a.m.

B e f o r e :

HON. MARK A. COSTANTINO,

U.S.D.J.

ILENE GINSBERG
ACTING OFFICIAL COURT REPORTER

Appearances:

EDWARD J. BOYD V
United States Attorney
Eastern District of New York

By: KENNETH KAPLAN
Assistant United States Attorney

BARRY SLOTNICK, ESQ.
Attorney for Defendant Morell

GEORGE SANTANGELO, ESQ.
Attorney for Defendant Bruson

* * *

THE CLERK: Criminal cause on trial, U.S.A. v. Pedro Morell and Ramon Bruzon.

MR. SLOTNICK: I have some applications.

An article appeared in this morning's Times on Page 31 and continuing to Page 46 in which the article - - the heading says "Use of Task Forces and Informers Helps Increase Drug Prosecutions."

The facts and circumstances in this article are very similar to the facts in this case.

The article goes into paid informers and how they help the government obtain convictions.

I would ask your Honor to voir dire the jury with respect to the article - -

THE COURT: That is today's Times?

MR. SLOTNICK: Yes.

THE COURT: All right.

MR. SLOTNICK: I'd like this marked as a court exhibit.

My second application arises out of something that came to my attention.

There was an article in the Daily News

with regard to this arrest naming a Miguel Alvarez DeVega referred to as Valdez and he is named as a co-conspirator. If that is the same Valdez - -

MR. KAPLAN: I don't read the Daily News.

MR. SLOTNICK: Do you know who it is?

MR. KAPLAN: I don't know who it is.

MR. SLOTNICK: If you don't know who it is that is good enough for me.

Regarding the Luis that Valdez testified about, leads me to believe that they have information bearing on this alleged individual.

MR. KAPLAN: I made the representation before that first of all the so-called informant by the name of Luis was not a witness to any transaction in this case. He was not a participant and the government relies on its right not to disclose the identity of a confidential informant.

One of the cases I would like to call to your Honor's attention regarding that is Darden and Swinger decided by this court and affirmed by the Court of Appeals.

MR. SLOTNICK: Your Honor, under Roviero I am entitled to know if he exists and if so, I am

entitled to that information.

MR. KAPLAN: He is not entitled to information that does not bear upon the case.

THE COURT: It does not bear upon this case.

MR. SLOTNICK: I would ask for an interview.

THE COURT: There is no testimony that this man had anything to do with this case.

MR. SLOTNICK: I would also ask your Honor to indicate to the jury that the delay is because the court had other business - -

THE COURT: No. I took the other case because Mr. Santangelo went to the Court of Appeals.

MR. SLOTNICK: I didn't know that.

MR. SANTANGELO: For the record, your Honor, I join in Mr. Slotnick's applications on behalf of the defendant Bruzon and I indicate to your Honor that I was before the Court of Appeals at 10:00 o'clock and I was here at 11:20.

THE COURT: I was not advised.

MR. SANTANGELO: I advised your secretary.

MR. SLOTNICK: I assume all my applications

are denied except for marking the Times as a court exhibit and requesting a little voir dire of the jury.

THE CLERK: Article marked as Court Exhibit No. 2.

(So marked.)

THE COURT: Bring in the jury. Let's get started with this case. I am tired of doing nothing with it and just talking about it. Let's try it.

(Jury entered jury box.)

THE COURT: We are ready to start.

Now, members of the jury, two things have happened.

One of the attorneys had to appear before another court and this court started to select another jury inbetween so we were not idle.

We are going to finish this case before lunch and then you will go out to lunch under the government's patronizing allowance.

Now, how many of you have read the New York Times?

JUROR NO. 2: I read the second section.

THE COURT: Did you read the first page?

JUROR NO. 2: No, the obituaries.

THE COURT: I turn to that column first. You do that when you get to a certain age bracket or you're in politics, whichever comes first.

In the second section, first page there was an article which I will not tell you about.

Have any of you read it?

(Jurors 5, 6, 7, 9 and 10 raised their hands.)

THE COURT: That article concerned the very thing we were talking about in this courtroom.

Now, again, who read it?

(Jurors No. 5, 6, 7, 9 and 10 raised their hands.)

THE COURT: I would like Jurors No. 1, 2, 3, 4, 8, 11, 12, Alternate 1 and Alternate 2 to please go back to the jury room. I would like all the jurors who have not read the article to return to the jury room.

JUROR NO. 9: I glanced at it. I did not get to the end.

THE COURT: It does not matter.

JUROR NO. 2: The newspaper is still

there, your Honor.

THE COURT: Oh, we will take it out.

(Whereupon, Jurors 1, 2, 3, 4, 8, 11, 12 and Alternates 1 and 2 were excused from the courtroom.)

THE COURT: We are talking about the article entitled "Use of Task Forces and Informers Helps Increase Drug Prosecutions."

You have read that?

(Jurors 5, 6, 7, 9 and 10 nod affirmatively.)

THE COURT: We have certain rights which must be protected and whether or not you agree with what newspapers have a right to print or not print is immaterial. I will not be the judge of that and I wouldn't dare give you my opinion.

I think when I selected you I asked if you read newspaper articles dealing with drugs. I am not sure if I did but I usually do. That is because I do not want anyone influenced by an outside source. It is a tremendous expense to get a case going in the courtroom and there should be no influence upon you by any outside forces.

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These men standing trial have a right to have an unjaundiced mind decide their case and I give you this preliminary talk because I must ask you some questions and you must be truthful and honest. I cannot place myself in your minds or determine whether you are telling me the truth or not but I have been instructed about the article that appeared and just from the headline alone it would have been wiser had you taken it and put it down immediately because it could exert an influence upon you which would not be good.

I, myself, when I try a case in court, if it is in the newspapers I do not read it. First of all, I never recognise it. I have tried many, many cases over the years and I don't think I really recognize any of the articles and say "That happened in my courtroom."

When a paper writes an article they write it so that the person reading it will be interested in it. It is never written with a true factual background as you get from the witness stand here. So of necessity, it has a bit of distortion. I don't say it is deliberate but it is not at all

what you will get from the witness stand.

No one in this article said "We are going to give truthful facts about everything." They don't have to. They can put down anything they want and that is the bad feature of reading about what is happening or may happen in a case before the court.

I will start with you, Juror No. 5.

Did you read the entire article?

MR. SANTANGELO: I'd like the juror's name for the record.

JUROR NO. 5: Conway.

I just spotted it. I read similar articles all my life. You see it on TV.

THE COURT: Did this article in any way influence you or do you feel it could influence your judgment in this case?

JUROR NO. 5: No.

THE COURT: Did this article cause you to reflect about the factual situations in this case?

JUROR NO. 5: No.

THE COURT: Did you read it as an item of news or a story item or with the idea of learning about prosecution in this type of case?

JUROR NO. 5: I just spotted it as anything else.

THE COURT: So, you are telling the court it would not affect your judgment or determination of the issues in this case?

JUROR NO. 5: Right.

THE COURT: Your name?

JUROR NO. 6: Sondra Harper.

THE COURT: How did it affect you?

JUROR NO. 6: I just read it before coming in here.

THE COURT: When reading it did it cause you to reflect upon some facts? Of course, you know it had nothing to do with this case - -

JUROR NO. 6: Right.

THE COURT: Did anything cause you to reflect on something that might have taken place in this case?

JUROR NO. 6: No.

THE COURT: Did it in any way whatsoever influence you so that you would not be impartial in making your decision in this case?

JUROR NO. 6: No.

THE COURT: You feel you can still be an

impartial juror?

JUROR NO. 6: Yes.

THE COURT: Your name?

JUROR NO. 7: Gertrude Steinberg.

THE COURT: Did you read the article?

JUROR NO. 7: Yes.

THE CCURT: Do you think it affected you - -

JUROR NO. 7: I didn't read it all through.

THE COURT: Did it influence you?

JUROR NO. 7: No.

THE COURT: Would it influence your verdict in this case?

JUROR NO. 7: No.

THE COURT: Would you still listen to the testimony you hear here and weigh it and also listen to the court's charge?

JUROR NO. 7: Yes.

THE COURT: And you also know that it had nothing to do with the facts in this case and it was not this case that we are talking about?

JUROR NO. 7: I understand.

THE COURT: And your name?

JUROR NO. 9: Rhoda Lazar.

I glanced at it and put it down. I was not concentrating.

THE COURT: Would it affect your judgment in the determination of this case?

JUROR NO. 9: No.

THE COURT: You still feel you can be fair and impartial?

JUROR NO. 9: Yes.

THE COURT: And your name, sir?

JUROR NO. 10: Edward Franklin.

I read only part of it.

THE COURT: Would it influence your judgment?

JUROR NO. 10: No.

THE COURT: You still feel you could be a fair and impartial juror?

JUROR NO. 10: Yes.

THE COURT: You promise me that you will not discuss the article during the balance of this case? Do you promise that you will not discuss it with each other?

(Jurors answer affirmatively.)

MR. SANTANGELO: Would your Honor ask whether they discussed the article with anyone

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else, any other jurors?

THE COURT: Have you discussed it among yourselves?

(Jurors answer negatively.)

THE COURT: All right. You may go back to the jury room.

(Jurors No. 5, 6, 7, 9, 10 were excused from the courtroom)

MR. SLOTNICK: In view of the substance of the article and the amount of people who have read the article I find that it has so polluted the jury box that they cannot be fair and reasonable and I would request a mistrial.

It is unfortunate that we went this far. There is no way those jurors could say it didn't influence them because it influenced me.

THE COURT: This is probably the first time during the whole trial I agree with you.

Look at the headlines. This case is based on that.

MR. KAPLAN: Your Honor, anyone reading such an article from time immemorial --

THE COURT: No. The problem here is not the problem of their reading something. The

problem is that after hearing the informant - - he is the most important person in the prosecution of these people and the title says that is what he is and according to the article describes his value.

It is not your fault, Mr. Kaplan. The case was going well for both sides and it was a good case to go to a jury.

MR. SANTANGELO: The article went on to say how successful the use of these informers has been.

MR. SLOTNICK: I was sick when I read it this morning. It influenced me.

MR. KAPLAN: The fact of the matter is many articles have been written about a case then in progress - -

THE COURT: I have never read an article like this. Of all the articles I have read about drugs or prosecutions I have never read an article with this headline and I assume in the Supreme Court many cases are being tried today with problems over there too.

MR. SANTANGELO: This is the first article that comes to my mind as to the use of paid

informers. That subject has only been treated in legal journals but never as a matter for the public, your Honor.

THE COURT: I will take a five-minute recess and sit down with it and make up my mind.

(Recess taken.)

(After recess.)

THE COURT: Bring in the jury.

(Jury entered jury box at 1:30 P.M.)

THE COURT: All right.

The court has a motion before it made with reference to the article appearing in the New York Times, second section, first page, entitled "Use of Task Forces and Informers Helps Increase Drug Prosecutions."

The court took under advisement the motion made and the court makes the following statement for the record:

In view of the article appearing in today's New York Times entitled "Use of Task Forces and Informers Helps Increase Drug Prosecutions," and the fact that five jurors have admittedly read the article, the court is compelled to declare a mistrial.

The article details the use of paid informers and closely resembles the events giving rise to the prosecution in this case. It is highly prejudicial.

Accordingly, the forelady of the jury is withdrawn and a mistrial declared without prejudice.

That means that you will not deliberate on this case and just to add on one additional item: This is the problem that the court faces when articles appear in papers and no one wants to listen to us - - no one. Perhaps you can go out and tell them the problem. This isn't your fault and it is not mine. I refuse to take the blame for it. I absolutely refuse.

You are discharged.

(Jury discharged at 1:30 P.M.)

THE COURT: All right. I will give you a date. One month - -

MR. KAPLAN: Your Honor, he has got to stay here - - Valdez.

THE COURT: Do you want to hold him for a while?

MR. KAPLAN: I'd like to retry this case

as soon as possible.

Your Honor is picking a jury on a drug case - -

THE COURT: It is a new panel.

MR. KAPLAN: Why can't we pick a new jury?

MR. SANTANGELO: Can't we wait a reasonable amount of time?

THE COURT: No. I will take care of it on the voir dire with the other jury.

MR. SLOTNICK: We would request any date after March 20.

THE COURT: You want it this week, you will get it this week.

MR. KAPLAN: I'd like it as soon as possible.

THE COURT: Thursday morning.

MR. KAPLAN: Your Honor, you are making it difficult on our informant. He is from Central America and he is here under conditions difficult to his own welfare.

THE COURT: Tomorrow morning. We will select a jury tomorrow morning and the court will take care of this article in the newspaper.

I will see you all tomorrow morning.

EXHIBITS

COURT EXHIBIT		PAGE
2	Times article.	76

* * *

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

Plaintiff,

- against - 72 CR 644

PEDRO MORELL and
RAMON BRUZON,

Defendants.

----------X

United States Courthouse
Brooklyn, New York

March 5, 1974
10:00 A.M.

B e f o r e :

HON. MARK A. COSTANTINO, U. S. D. J.

ILENE GINSBERG
ACTING OFFICIAL COURT REPORTER

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APPEARANCES:

EDWARD J. BOYD, V., U. S. ATTORNEY

BY: KENNETH KAPLAN, AUSA

BARRY SLOTNICK, ESQ.
Attorney for defendant Morell

GEORGE SANTANGELO, ESQ.
Attorney for defendant Bruzon

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THE CLERK: Criminal cause on trial, U.S.A. v. Pedro Morell and Ramon Bruzon.

MR. KAPLAN: Can we just stipulate to the markings of the documents in evidence as being the same as in the previous trial and that the 3500 material has been received?

MR. SLOTNICK: No objection.

MR. SANTANGELO: So stipulated.

MR. SLOTNICK: I have two applications, your Honor: I would move this Court for a continuance based on a two prong reason.

Your Honor rightfully declared a mistrial yesterday due to the New York Times article.

THE COURT: I'm certain of that.

MR. SLOTNICK: Yes, but in view of the fact that we are caused to commence a new trial on the second day, we have jurors who have read the article or we are excluding jurors who read the New York Times. I think that article has to linger with them.

I will have to ask for a two week continuance.

THE COURT: The Court has no authority, nor does the Court feel that it can prevent the press from printing anything in the newspaper, whether it be about drugs or any other items.

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The reason for the mistrial yesterday is not that the New York Times printed an article about paid informants -- and they had a right to do so -- the reason for it is that the testimony in the case had already been submitted and the prime witness in the case was a paid informant which might have in some way influenced the five people who read it and secondly, the Court felt that the answers to the Court's questions were less than candid.

MR. SLOTNICK: I appreciate the reasoning.

THE COURT: Oh, I will place on the record what I am thinking.

Never, under any circumstances, will I say there is no freedom of press. The press can print anything they want but once a case in my court is affected, I take steps with regard to that. I make sure everyone in my court gets their day in court.

MR. SLOTNICK: My second reasoning, if you deny the continuance on the first ground, is, in view of the fact that it was yesterday's article and so close, the jurors coming up today may be saturated or influenced or poisoned and I make this application on behalf of both the defendants.

The defendants came to court and were afforded

a trial which was going along well until the unfortunate mishap and it was no fault of anybody's, it was just fortuitously printed on the day it was printed.

Now, these men have certain conditions and work schedules they worked out. The testimony indicated they are house painters with business and Mr. Kaplan is aware of the fact that they are steadily employed. In addition, character witnesses testified to that.

So, I would further state that the defendants are being unduly punished --

THE COURT: How can the defendants be unduly punished with a speedy trial?

If they are innocent they will walk out free men. If they are found guilty, they will suffer the punishment the law sets forth.

MR. SLOTNICK: That was my second application.

THE COURT: I see no merit to the second argument at all. If that was the case, every man with a job would not come to trial and he would say he is being denied his right to be declared innocent. You know, you can't have it both ways. I don't mind being fair but I don't want to be ridiculous. If

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no one else says it about me, I'll say it. It's about time I gave myself some bouquets.

MR. SLOTNICK: Your Honor, I received what Mr. Kaplan characterized as 3500 material but no Grand Jury material or written formal material of the arrest record of Valdez, of the deal in Florida, of his deal with McElroy, the agent and I noticed recently, that on December 27, 1973 -- U.S. v. Holly -- Judge Oakes wrote a separate decision criticising this kind of behavior, indicating the United States Attorney should give counsel material to work with, especially here, where I have a man claiming he doesn't understand me.

It would mean a call from Mr. Kaplan to find out the facts and circumstances of the deal.

MR. KAPLAN: I made total disclosure of anything to do with his testimony. I turned over all 3500 material. His arrest, his life was brought in front of the jury. We have no arrest record in our possession and the incident took place two years ago.

MR. SLOTNICK: It is in the possession of the United States Attorney in Florida.

MR. KAPLAN: Not this United States Attorney.

THE COURT: You know what courts he's been in. Get a copy of the plea, find out what it's all about -- a certified copy.

MR. SLOTNICK: It is the federal court in Florida someplace and I never knew that until Wednesday or Thursday of last week.

Certainly, one phone call -- the United States Attorney in Florida isn't going to answer my call.

I think it is incumbent upon Mr. Kaplan to gather the material.

MR. KAPLAN: There is nothing in our possession and it is two years before. He has had a total opportunity to cross examine the witness.

MR. SLOTNICK: He claims he doesn't understand me.

THE COURT: We are going to have an interpreter. A Spanish interpreter might illicit better answers to the questions.

MR. KAPLAN: As long as that is made known to the jury.

The fact that he testified in English in the first case --

THE COURT: Who's going to ask him that?

MR. KAPLAN: The inference may be drawn.

MR. SLOTNICK: I'm going to ask him if he answered certain questions but I'm not going to ask whether it was English or Spanish.

MR. KAPLAN: Then I would have to ask that question to rehabilitate him.

THE COURT: I will advise the jury that at a previous time he answered questions in English and at this time the Court feels he should have a Spanish interpreter.

MR. SANTANGELO: I object to that.

THE COURT: Why?

MR. SANTANGELO: You're telling the jury in effect, that some answers may have been mistaken because he didn't understand and that's the argument the United States Attorney should make.

THE COURT: I don't understand that because when my mother spoke in Italian I understood and if she spoke in English and I didn't understand, then she spoke in Italian and I understood.

MR. SLOTNICK: There's no Grand Jury testimony provided to me. I assume -- there is none -- I assume there was some.

MR. KAPLAN: He did not testify before the

Grand Jury.

MR. SLOTNICK: I move to dismiss the indictment based on the fact that the United States Attorney should have put the witness before the Grand Jury based on the Stepper case and this was a matter criticised by Judge Weinstein in Curry.

MR. KAPLAN: Let me represent on the record, your Honor --

THE COURT: You are saying they should have put Valdez before the Grand Jury?

MR. SLOTNICK: Yes, and without that you have only McElroy.

THE COURT: That's not the right motion.

MR. SLOTNICK: I would ask your Honor to read the Grand Jury minutes to see if there is sufficient testimony to indict on the conspiracy count for which Valdez had to testify as to the conspiracy.

THE COURT: That, I will do. That's the right motion.

MR. SANTANGELO: May the record be clear, I join in that motion.

MR. KAPLAN: I ask this be marked as a Court exhibit -- Grand Jury testimony of Agent McElroy.

THE COURT: Agent McElroy. That's the Grand Jury testimony for this case -- Agent McElroy's testimony.

THE CLERK: Grand Jury minutes marked as Court exhibit 3.

(So marked)

THE COURT: Get the jury up and I'll be right out.

(Recess taken)

THE CLERK: Court exhibit 1, Stipulation.

(So marked)

THE CLERK: New York Times article, Court exhibit 2.

(So marked)

THE CLERK: Grand Jury minutes, Court exhibit 3.

(So marked)

(Whereupon prospective jurors entered the courtroom and the selection of the jury commenced)

THE COURT: We are going to recess now and be back in the courtroom at 2:15.

You people take these seats where you are sitting now and then rest of you come back in the courtroom and we will continue to select the jury

at 2:15.

(prospective jurors excused for luncheon recess)

MR. SANTANGELO: I assume your Honor denied the application to dismiss the indictment?

THE COURT: Yes.

MR. SLOTNICK: In total?

THE COURT: Yes.

After reading the Grand Jury minutes submitted to the Court upon the motion of the defendants, to determine whether or not there was sufficient probable cause for the Grand Jury to render presentment of an indictment, the Court finds there was sufficient probable cause and the motion must be denied.

MR. SLOTNICK: Respectfully except and for all motions for one defendant, I assume your Honor will regard it for both defendants.

THE COURT: Yes.

By the way, it was not based on hearsay.

MR. SLOTNICK: Your Honor, as to preemptory challenges, I think your Honor saw that at certain times we approached the table individually. I'd like a few more challenges. We have some differences.

THE COURT: I don't think it is necessary.

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MR. SANTANGELO: Would your Honor inquire as to whether or not they read the New York Times yesterday?

THE COURT: I asked about it and I even said about paid informers and not one raised their hand.

MR. SANTANGELO: You said "Any article."

THE COURT: I said "As recently as yesterday," and no one raised their hand.

I have a good jury here. I'm not opening doors.

You could take the first twelve and be as safe as you would be with the last twelve.

MR. SLOTNICK: How late do you think we will be working?

THE COURT: Pretty late.

MR. SLOTNICK: I have a police hearing at 7:30 and I can call them --

THE COURT: I don't know yet.

(Luncheon recess taken)

(continued on next page)

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AFTERNOON SESSION:

(Prospective jurors entered courtroom)

THE COURT: All right, gentlemen.

(Whereupon at 3:10 p.m. a jury consisting of twelve members and two alternates was duly sworn and impaneled by the Clerk of the Court)

THE COURT: Now, this case is going to start in about ten or fifteen minutes. I will give you a short recess.

The room you go through is through this door and then there is a door to the left and you will stay in that room until the Court tells you to come out.

Go inside and I will bring you out in a few minutes.

(Jury excused at 3:10 p.m.)

MR. KAPLAN: Your Honor, what about the interpreter?

THE COURT: I'm going to start without him and we will see if we need one.

MR. KAPLAN: Will this be explained to the jury so it doesn't reflect on the witness?

THE COURT: We'll cross that bridge when we come to it.

(Recess taken)

(Jury entered jury box at 4:10 p.m.)

THE COURT: Ladies and gentlemen and Mr. Foreman, we are now going to start the case.

We will work a little late this evening. This case, of necessity, must be completed for several reasons. It doesn't make a difference to you as to the reasons.

You will expect the United States Attorney to open and tell you what he intends to prove and what the case is about and what he tells you is a statement and not evidence in the case whatsoever.

The evidence will come from the witness stand. If a piece of paper is marked for identification that is not evidence and you cannot see it. You can only see papers marked in evidence. So, keep that in mind.

The other thing, if a lawyer objects to a question the Court will sustain the objection and the question will not be answered and if I overrule it, it can be answered. So, it is up to you to remember.

It is vital that you watch the witnesses. The questions are not evidence. The answers are

evidence.

There are certain things you can apply together with your good common sense and judgment to determine whether or not a witness impresses you as telling the truth.

First of all, the motive a witness may have in testifying, the interest a witness may have in the outcome of a proceeding, whether or not he is frank in answering the questions, whether or not he is telling you something he wants you to believe, whether or not he is fabricating testimony or whether or not he actually has the knowledge from which he is expressing himself from the witness stand and conveys to you that he knows what happened. You do not leave your common sense outside to determine the truthfulness of what a person says to you.

From time to time, as you will witness, the lawyers may ask me to step to the side of the bench to determine whether or not a certain question should be asked or certain things should or should not be done and I will make a ruling on the record in their presence but outside your hearing. It is something you should not hear and when I make a ruling it is not because of a whim or idea I have

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but because it is part of the rules and most rules of evidence have been around for many, many years and I'm extremely familiar with the rules of evidence and you will notice that lawyers rarely argue with my rulings and if they do, they will take exception and then continue on.

You will find I have no difficulty with the lawyers and any questions you may have or you think you have during the trial will be answered so be rather patient.

If at times we take a recess longer than I said it would take, it is because there are other things the Court may be doing or the lawyer might ask for a longer recess than I would normally give.

I mention that to you because I have known, over the years, of complaints of jurors that they think time is being wasted in the courtroom. That is not true and this courthouse will be here long after you and I are gone. Just sitting there, you are performing a very important task. Perhaps the most important in your life.

Mr. Kaplan, will you now stand and I am sure you will probably read the indictment, which I have not done.

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MR. KAPLAN: May it please the Court, Mr. Slotnick, Mr. Santangelo, and ladies and gentlemen of the jury:

As you have heard, my name is Kenneth Kaplan and I am an assistant United States Attorney assigned to prosecute this case.

As an assistant United States Attorney it is my responsibility and privilege to present the evidence and argue this case on behalf of the United States Government.

Before the case is presented to you and evidence is commenced, I am allowed by law to make a few remarks about what the Government is going to prove and how the case is going to proceed.

There is an indictment that has been filed in this case and I will read it to you.

"United States of America v. Pedro Morell and Ramon Bruzon, defendants.

"The Grand Jury charges:

"Count one: On or about the 25 day of May 1972, within the Eastern District of New York, the defendant Pedro Morell and the defendant Ramon Bruzon wilfully and knowingly did combine, conspire, confederate and agree together and with each other to

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distribute a quantity of cocaine hydrochloride, a Schedule II narcotic drug controlled substance in violation of Section 841(a)(1), Title 21, United States Code and also Section 846, Title 21, which is the conspiracy section of the United States Code.

Count two, reads as follows:

"On or about the 25 day of May 1972, within the Eastern District of New York, the defendant Pedro Morell and the defendant Ramon Bruzon, did possess, with intent to distribute approximately 3,867 grams net weight, of cocaine hydrochloride, a Schedule II narcotic drug controlled substance in violation of the relevant statutory statutes, Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2."

As his Honor informed you, this is an indictment. It is merely an accusation, a charge. It is not evidance. Evidence comes from that witness stand and documents which are offered and accepted into evidence.

Anything I say and the attorneys say in the course of the trial is not evidence.

You might say, "How is the Government going

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1972.

There were conversations between Valdez, Morell and Bruzon concerning the purchase of a certain quantity of cocaine soon to arrive from South America.

Morell and Bruzon are painters and you will hear that they had a store or warehouse somewhere in Jackson Heights in Queens.

There was an exchange between Valdez and Morell of telephone numbers. Valdez received their business card and every once in a while Valdez would drop over to the store to find out when the cocaine was coming in. He went there four or five times and had conversations on each occasion.

About May, 1972, Valdez received a call from one of the defendants who said , "The gallons of paint arrived. They are about twelve-fifty a gallon." He didn't want to talk on the phone.

He told him to meet with him at a bar and Bruzon and Valdez met and they negotiated for the purchase and sale from Morell and Bruzon to Valdez, of some four kilos, approximately 8 point 8 pounds of cocaine. The price, about twelve thousand dollars.

Bruzon said, "To finalize the deal, clear it with my partner, Pedro Morell" and later that day or

the next day, Valdez proceeded to Morell's residence and they had a conversation at which time they settled the price, the quality, the quantity and other facts concerning the deal.

Morell told Valdez to finalize the deal and pick up the cocaine that day, being May 25, 1972, in the paint store in Jackson Heights.

Valdez of course, was in contact during this time with agents of the Bureau of Narcotics and he proceeded to the paint store in question and I should add that the paint store was surveilled by agents of the Bureau of Narcotics and by that, we mean, there were agents in the front and back, watching the movement of people in the front and back.

Valdez went in and met with Morell and Bruzon for forty minutes and the cocaine was being cut by Bruzon. By that, we mean, diluted and that will be explained.

There was a signal for the agents to come in and make the arrest. That signal was the opening of a car trunk, where $48,000.00 was contained.

Morell and Valdez went outside, opened the trunk of the vehicle and at this point or a few seconds later, the agents came in and made their arrest of

Morell and went downstairs and arrested Bruzon and it will be shown on the stand that Bruzon was running out of the premises at the time the agents were about to make their arrest.

The agents seized approximately nine pounds of cocaine and you will hear testimony of a special agent of the Drug Enforcement Administration who will tell you about the facts of the seizure and the arrest of Morell and Bruzon.

That basically, is the Government's case.

I ask you to pay particular attention to the witnesses; evaluate the testimony carefully, fairly and if you do so, and if you do so with a fair mind, then you have satisfied your job here as jurors and I thank you very much for your attention.

(continued on next page)

MR. SLOTNICK: May it please the Court, Mr. Foreman and members of the jury:

I'm sure that we have been fascinated with the able and extraordinary ability of the United States Attorney.

As he stands here and tells you a story, you think, "My goodness. It sounds like the defendants are guilty."

Well ladies and gentlemen, I tell you this right now, no body in this country should be or can be stricken down by a prosecuter's speech.

Mr. Kaplan is an able orator but he wasn't there. He doesn't know the facts and all he knows is what his one witness teld him and I'll get to him in a moment.

I ask you to bear in mind the Judge's admonition, "Don't come to a conclusion. Don't discuss this among yourselves. Listen to each and every word." Judge Costantino has been on the bench for close to twenty years and this Judge has directed you to do that. Why? Because as you go through the trial you see that facts change and stories change; the testimony changes; that what looks like it is one thing is actually another.

By the way, every word Mr. Kaplan said to you, I believe he thinks is the truth, but remember one thing, he wasn't there. He doesn't actually know what happened and I'm going to tell you something -- he has gotten, or a case has been made, by a paid informer, a man by the name of Alfredo Valdez.

Alfredo Valdez is going to tell you a story -- uncontradicted on direct -- very similar to what Mr. Kaplan has told you.

Alfredo Valdez will be prove to you to be a liar.

Alfredo Valdez was and probably still is a cocaine trafficer --

MR. KAPLAN: Objection. He is giving instructions to the jury.

THE COURT: Disregard that statement completely.

MR. SLOTNICK: Alfredo Valdez was in the cocaine business --

MR. KAPLAN: Objection. There is no testimony to that effect.

THE COURT: There was a statement that he was convicted in 1969 -- period.

MR. SLOTNICK: You will. One of the things the Judge told you to do, is not leave your common sense

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home and when you listen tothe witness as he testifies, think about it. Remember the example the Judge gave about a little boy running to his mother and saying "This happened." Does she assume that is the truth or does she listen to the various stories to find out the truth?

It is our contention that you will be able to tell from that witness stadd that Alfredo Valdez had his back against the wall; that you will be able to tell from the witness stand that he was in deep trouble with the agents from the United States Government and as a result of that, Alfredo Valdez turned around and gave to the agents of the United States Government, an innocent man.

I tell you there is no question but after this trial is over, you will see that my client was dragged through this horror for two years, on the word of a man himself involved in this disgusting ill-reputed business.

You listen to Alfred Valdez, this man who lived in the life of crime, adept at perjury --

THE COURT: I think you are bordering on summation rather than opening.

MR. SLOTNICK: I'm sorry. I'll calm down.

THE COURT: Disregard the statement.

MR. SLOTNICK: Excuse me.

All I ask you to do, as is your sworn duty, do not make up your mind. Listen to the witnesses. Listen to the cross examination. Listen to what is presented and when I come back at the end, in summation, what I said at the opening will make a lot of sense. I will be able to look each and every one of you in the eye and ask you to acquit my client but only if you wait and you will see from the witness stand that this case will have an Alfred Hitchcock ending and you will see that my client was put through two years of agony --

MR. KAPLAN: Objection.

MR. SLOTNICK: They will see it from the stand.

THE COURT: This is summation, not opening.

MR. SLOTNICK: I ask you to listen to the Judge, even though he corrects me and I ask you to remember what he said and even what Mr. Kaplan said about this piece of paper. That is, an indictment is merely an accusation and if you recall, when we began selecting the jury, the Judge asked "Are you one of the people who think where there is smoke there is fire?" Well, the indictment means nothing.

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The Judge will tell you the law. No one else can tell you that. The facts, that is purview. Twelve of you will walk into that jury room and determine the facts after listening to all of the evidence and remember Mr. Kaplan asked you to convict on the small part he told you about. I ask you to listen to it all.

Even though it is the Judge's province with regard to the law, I know he won't mind if I remind you of the presumption of innocence.

One of the things we go through a trial with is the presumption of innocence. I like to analogize it to a baseball game.

If we were to open the game as we did this trial and you walk out into that jury room right now, you have to vote my client not guilty because he is presumed innocent throughout the entire trial. The score is one nothing and I'm ahead. I have no burden, no obligation -- nothing. I don't event have to open to you. So, remember about the presumption of innocence and keep an open mind.

Judge Costantino said it -- "You must make a fair and impartial judgment. Their liberty is at stake. Jurors are not allowed to cross examine.

Cases and issues will change."

Don't make up your mind until the evidence is closed. You can shut out my summation, anything you want, but don't close your minds to the evidence because you will see at the end of this trial, in the dramatic ending I promise you, that my client is innocent.

Ladies and gentlemen of the jury, I ask you again to wait and listen -- you'll see -- listen and you will hear perjury, inconsistent statements --

MR. KAPLAN: Objection.

THE COURT: Sustained.

MR. SLOTNICK: (continuing) From the stand --

THE COURT: Unfair comment at this point.

MR. SLOTNICK: Most of all, you will see innocence.

I ask you to keep an open mind and in knowing that I am assured that Pedro Morell will be vindicated.

Thank you.

MR. KAPLAN: May we have a side bar, your Honor?

(Side bar discussion)

MR. KAPLAN: Your Honor, just recently Judge Mansfield commented upon this type of thing happening

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in a federal court and defense counsel was excoriated.

This is not even summation and I ask that the jury be instructed specifically.

THE COURT: They will be instructed on how to weigh the testimony.

MR. KAPLAN: This was a flamboyant, bombastic summation which the Court of Appeals found objectionable.

THE COURT: Do you want to withdraw a juror?

MR. KAPLAN: No. I want an instruction that it was improper comment.

THE COURT: I said that. Do you want me to compound it?

I can either withdraw a juror or continue with the trial. I don't want to compound it by making statements to them.

(Conclusion of side bar discussion)

(Following held in open court)

(continued on next page)

MR. SANTANGELO: May it please the Court, Mr. Kaplan, Mr. Slotnick and ladies and gentlemen of the jury:

There is not much more that I can add about Alfredo Valdez that Mr. Slotnick hasn't mentioned to you.

I do want to comment however, with respect to what Mr. Kaplan said he would show you as his evidence in the trial.

There are three basic elements to the evidence as Mr. Kaplan described it to you.

Valdez will testify that he met my client, Ramon Bruzon. He will testify that they met again to "finalize" thedeal and then he will testify that he went to a paint store or a store where he saw Ramon Bruzon and there he was to pick up the cocaine that is charged in this trial.

I ask you, as to those three main elements of this charge -- and that is what the charge boils down to, these three things -- that they met the first time, finalized the deal and Valdez went to pick up the cocaine -- I ask you to listen to Valdez's testimony and also listen to what he has previously said at a previous trial --

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MR. KAPLAN: Objection to that.

MR. SANTANGELO: It's going to be evidence.

THE COURT: It's not fair comment at this time.

MR. SANTANGELO: I ask you to weigh whatever inconsistencies there are, with regard to these three main elements of the charge, that you hear coming from Mr. Valdez's mouth and I ask you, after you weigh those inconsistencies and determine what kind of man Valdez is, to ask the questions, "Would he lie; could he lie" and "Did he lie?" When you ask those questions I want you to ask yourselves about my client, Ramon Bruzon and you'll find out about him. You'll find out he is a painter; that he has worked hard while in this country. You will hear character witnesses who will come and testify for him and they will tell you his reputation in the community and after you have heard about Valdez and after you have seen him and listened to what he said, I ask you, how likely it is, that his story is true and I ask you to determine how likely it is that Ramon Bruzon, with the background that he has, the type of person he is, how likely is it that he would be involved in a transaction as he is charged.

To do this, you cannot make up your minds now. To do this, you have to listen and listen attentively. It will do me no good to say it again and again and again but I ask you, as you look at me and as I look at you, to silently promise yourselves -- because the responsibility is yours as citizens of this great country -- to promise yourselves that you will listen, weigh the evidence, you will wait until it is all in, you will deliberate, listen to your fellow jurors and when you come to a decision I firmly believe that that decision will be, not guilty.

Thank you.

THE COURT: All right. First witness.

MR. KAPLAN: The Government calls Alfredo Valdez.

ALFREDO VALDEZ, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record, please.

THE WITNESS: Alfredo Valdez, V-a-l-d-e-z.

THE COURT: Now, listen to the questions and speak slowly and loudly.

THE WITNESS: Yes.

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DIRECT EXAMINATION

BY MR. KAPLAN:

Q If you have trouble understanding the questions ask that they be repeated.

Mr. Valdez, where do you presently reside?

A Say it again, please?

Q Where do you live at the present time?

A Central America.

Q When did you move to Central America?

A July, 1973.

Q Before July, 1973, where did you live?

A New York City.

Q Where?

A Queens.

Q How long did you live in New York City?

A I live in Brooklyn, Manhattan and Queens.

Q With whom did you live?

A Around eleven year.

Q When did you first come to this country?

A 1962.

Q When did you first come to this country?

A '62.

Q From where?

A Cuba.

Q So, you lived from 1962 to 1973 in the United States?

A Yes.

Q With whom did you live during this period of time?

A My wife.

Q Have you ever been convicted of a crime?

A Once.

Q When was that?

A Miami, 1969.

Q Can you tell us the nature of the offense?

A Possession -- one kilogram of cocaine.

Q What court, if you can recall?

A Three year probation.

MR. KAPLAN: We'll ask that question be repeated.

(Record read by reporter)

A (no response)

Q What court were you sentenced in?

A Miami.

Q And did you receive a sentence from the Court--

MR. KAPLAN: Withdrawn.

Q Did you enter a plea of guilty?

A Yes.

Q When was that?

A I believe 1970.

Q After you entered a plea of guilty were you sentenced by the Court down in Miami?

A Say it again, please?

Q After you entered a plea of guilty were you sentenced -- did you receive a sentence from the Court in Miami?

A Yes.

Q What was that sentence?

A Three years probation.

Q When was the sentence, if you can recall -- what year?

A I don't remember. It was in 1970.

Q Now, did there come a time when you began working with the Bureau of Narcotics' agents?

A I work after 1970.

Q When was that?

A Exactly when , I don't remember.

Q With whom were you working?

A The agent Gene McElroy.

Q Mr. McElroy here in the courtroom?

A Yes.

Q What was the type of work you did with the agent?

MR. SLOTNICK: Objection, your Honor.

MR. KAPLAN: Preliminary question.

Q What was the nature of your work? What exactly would you do?

A Look for people.

MR. SLOTNICK: Objection. Let's discuss the specific situations.

THE COURT: This case only.

MR. KAPLAN: I have to determine what he was doing.

MR. SANTANGELO: Objection. No relevance.

THE COURT: Just what he was doing in this case.

Q For the work that you did with the agent, did you get paid?

MR. SLOTNICK: Objection.

THE COURT: I'll allow that.

Q Did you get paid?

A Yes.

Q Do you recall how much you got paid on each occasion?

A All depends.

Q What would it depend on -- what factors?

A How long this case --

Q How long the case was pending?

A Yes.

Q What other factors?

A On the quantity of the package.

Q Can you tell us who would pay you? By whom would you be paid?

A Gene McElroy.

Q Agent McElroy?

A Yes.

Q Now, did you meet with people in connection --

MR. SLOTNICK: Objection. Let's get specific. This is enough background.

THE COURT: Ask him.

Q What did your do with respect to your job working for Agent McElroy --

MR. SLOTNICK: Same objection --

Q (continuing) In 1972, for example.

THE COURT: I'll allow it.

Q What type of work did you do?

A I worked in a garage.

Q Other than your other jobs, what did you do with Agent McElroy?

A Oh, I cooperate, look for people in business sell the cocaine.

Q Explain to us how you would meet with people.

MR. SLOTNICK: I object. This is a specific case, an indictment.

THE COURT: Sustained.

Q Did there come a time when you met the defendants in this case?

A Excuse me?

Q Did there come a time when you met the defendants in this case?

A I can't understand that word, please.

Q Was there a time that you met Morell and Bruzon--Ramon and Pedro?

A Yes.

Q When was that?

A That was, I believe, 1972.

Q What month, if you recall?

A April.

Q Early, middle or late April?

A I think -- I remember -- no -- late in April.

Q Late in April.

By the way, can you point out the two defendants--

MR. KAPLAN: Withdrawn.

Q Can you point out the individuals whom you met and tell us their names?

A That is Pedro and that is Ramon.

MR. KAPLAN: Will the record so indicate he has identified the two defendants.

Q How where did this meeting take place?

A I met at that time in April some fellow Louie who introduced to me.

Q Did you know Louie before this time?

A Yes.

Q How did you know him?

A He got the business, repair televisions.

Q How many times, if you can recall —

A A couple of times.

Q You met Louie a couple of times?

A Yes.

Q Was he a Spanish-speaking person?

A Yes.

Q Was he a Cuban or you don't know?

A I don't know.

Q Tell us under what circumstances Louie introduced you to Pedro and Ramon?

A Well, before when I took my television to the store I start to speak to Louie and he knows some people in business and he told me, he lets me know, he knew a few people.

Q Well, tell us the circumstances under which you met Pedro and Ramon?

A I met Pedro and Ramon in the street. I work at that time, I think, 103rd Street.

I saw Louie and Pedro and Ramon.

Q What neighborhood?

A I think in Queens.

Q Where in Queens, if you recall?

A That's 103rd Street to the corner to Roosevelt Avenue.

Q How did the meeting take place?

A I saw Louie speak on the corner and I walk to the three and Louie introduce me to Pedro and Ramon at that moment.

Q Was there conversation between yourself and Pedro and Ramon?

A Louie say to me, "These are two guys. They deal big business" --

MR. SLOTNICK: Objection.

THE COURT: Sustained.

MR. KAPLAN: In the presence of the defendant, your Honor.

THE COURT: Was Pedro and Ramon there?

THE WITNESS: Yes.

THE COURT: I'll allow it.

Q What did Louie say to you?

A "These two guys, Pedro and Ramon are in business and you can talk to them and after what you do, I know nothing."

Q What was the type of business?

A Sell cocaine.

Q Had you had a conversation with Louie about this previously?

A No -- yes, before, but he didn't say the name to the two people.

Q That was Louie?

MR. SLOTNICK: Objection. Mr. Kaplan is leading the witness.

THE COURT: Go ahead.

Q At that time did you, Pedro and Ramon and Louie -- did you have a conversation at that time with Pedro and Ramon?

A Yes.

Q Tell us what they said to you and what you said to them.

MR. SLOTNICK: I object.

THE COURT: Was Louie there?

Q Pedro and Ramon and you were standing together?

A Correct.

Q One of them was talking first, or both --

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MR. SLOTNICK: I object to this. Either Mr. Kaplan or the witness testifies.

THE COURT: We have a problem with language. I'll allow it.

Q Tell us, what did you say to them and what did one or both of them say to you at that time?

A At that time I speak to first Ramon and I ask how much can he get it for me and he say he expect a shipment about ten key, cocaine, about twenty pounds.

I ask to Pedro "When" and he say, he don't know, but he going to expect it soon.

Q Did they tell you where it was coming from?

A Columbia.

Q Columbia or any other country?

A No, that's what they said to me.

Q Was there any other conversation at this time?

A At that time I gave my phone to Ramon and after that I speak to Pedro, "Let me know as soon as you get the merchandise" and he give me the address to a store he have.

Q Now, tell us how they gave you the address to the store?

A He give me a little green card -- green or white card. I don't recall the color.

Q Do you recall if there was an address on the card?

A I got the address.

Q Did you go to that address?

A Yes.

Q Where was that?

A 31st between 90th and 91st.

Q Was there any conversation in Queens about going to the address -- any conversation between yourself and the defendants Pedro and Ramon, about going to the address?

A Yes.

MR. SANTANGELO: Objection to the leading.

THE COURT: I will allow it.

Q What was the conversation you had at that time?

A The conversation was -- I speak to both -- and Ramon told me, "to find out about the merchandise, you go between four and six. You speak to me or Pedro."

Q We are talking about the conversation on the street corner?

A Yes.

Q Was there any other conversation you had with them at this time?

A No.

Q By the way, were you in contact with Agent McElroy at this time?

A Always.

Q How would you be in contact with him?

A I call him to the office --

MR. SLOTNICK: Objection.

Q Did you have a phone at your residence in Queens?

A Yes.

Q Did you give that number to one or both of the defendants?

A Yes.

Q By the way, what language were you speaking in at this point, at the meeting?

A Spanish.

Q Now, did there come a time when you saw Pedro and Ramon again?

A Yes. I saw a couple of times more.

Q Where would you see them?

A In the store.

Q When you say "the store" explain to the members of the jury what you mean by "the store."

A The store, he kept clothes in the basement for paint. They were in the painting business.

Q Did they tell you about the paint business?

A I saw the paints and I saw the clothes.

Q What type of clothes?

A Work clothes.

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Q With paint on it?

A Yes.

Q You say you went to the store on some occasions; is that correct?

A Yes.

Q How many times would you say you went to the store?

A About four or five times.

Q Will you tell us, on each occasion, whom you saw at the store?

A Both.

MR. SLOTNICK: Could we know when?

THE COURT: When was this?

Q Between what period of time did you go to the store?

A Between four and six --

Q Excuse me.

The first meeting with Pedro and Ramon was late in April?

A Yes.

Q And the last time you saw them was, what day?

A I believe in May.

Q May 25 -- the last day that you saw them?

A It was May 25.

Q So, how many times and how often did you see them in between this period of time?

A The first to the last?

Q Yes.

A Four, five, six times, I believe it was.

Q Would you go every week or every other day or every three days -- how often would you go?

A Sometimes every three weeks -- three days and sometimes a week.

Q When you went to the store on each occasion, was there anyone there other than Pedro and Ramon that you saw?

A No.

Q Please describe to us the store.

A The front, he got fruit. He sell the fruit.

Q Who was selling fruit?

A I don't know. I saw he prepare to sell fruit but I see only a couple of fruit in there.

Q What type of fruit, if you recall?

A Banana, apple.

Q What was the inside of the store? Had you been in the inside of the store before May 25?

A Yes. That's what I say. He got a big empty refrigerator. He got a door in the floor you go through to

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the basement.

Q When you say "a door in the floor" would it be fair to say that was like a trap door, if you know what that term means?

A Yes.

Q Were you ever in the basement with Pedro and Ramon or one or both of them?

A A couple of times.

MR. SLOTNICK: May we know when?

MR. KAPLAN: Four or five occasions.

THE COURT: We are entitled to approximate dates, Mr. Kaplan.

When did this happen?

THE WITNESS: Twice.

Q Two of the four times you went in the basement?

A Yes.

Q On each of those occasions --

MR. KAPLAN: Withdrawn.

Q Each time that you saw Pedro and Ramon were they together?

A Yes.

Q Were you speaking to them together?

A No, I speak Spanish.

Q Yes, but were you speaking to them while they

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were together -- the three of you were together in the same room? Do you understand that?

A No, say it again, please.

Q When you and Pedro and Ramon -- when you visited the store were you, Pedro and Ramon together?

A Yes.

Q In other words, the conversations took place between the three of you -- you, Pedro and Ramon?

A Yes.

MR. SLOTNICK: There appears to be a language problem but I think Mr. Kaplan is overstepping the bounds.

I don't think he should repeat and testify for the witness.

THE COURT: No. You'll have the same leeway.

MR. SLOTNICK: Thank you, your Honor.

Q Can you tell us on each of these occasions when you met with Pedro and Ramon, what was the nature or the type of conversation that you had? Tell us the conversation.

A Oh, the conversation about to -- he have the merchandise, the cocaine. He say he don't have it yet but expect it soon. How soon? He don't know. I speak to him. "What's the price?" He say he don't know at that time.

Q You said you spoke to him. Who do you mean?

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A I speak to both -- I can't speak to both of them at the same time -- Pedro and Ramon.

MR. SLOTNICK: When did these things happen?

THE COURT: About when did you speak to them?

THE WITNESS: I can't remember the exact date.

THE COURT: About.

THE WITNESS: May.

THE COURT: Before May 25?

THE WITNESS: Yes.

THE COURT: Three, four, five, six days?

THE WITNESS: Five or six days.

Q Now, can you tell us if there came a time that you received a phone call?

A Yes.

Q From whom?

A Ramon.

Q And can you tell us if he identified himself at that time?

A Yes.

MR. SLOTNICK: Objection to any conversation as not binding upon my client.

THE COURT: It's not binding upon your client.

MR. KAPLAN: The acts in furtherance --

THE COURT: We'll get to that in a moment but right now the conversation as between him and Ramon he says is not binding on his client and it is not.

Q You got a call from Ramon?

A Yes.

Q Where were you?

A My house.

Q Can you tell us the date?

A I believe the day before the 24.

Q That would be the 23rd?

A Something like that.

Q May 23rd?

A Yes.

Q Did Ramon identify himself on the phone?

A Yes.

Q What did he say to you?

A I got to the phone.

"Who's speaking?

"He, Ramon."

He say, "I got the paint for you."

Q Who exactly did he say he got the paint --

A He say "I have the cocaine." You have to change

the words.

MR. SLOTNICK: Objection. It is a conclusion.

THE COURT: The conclusion is stricken.

Q What did he say about the paint?

A He say he have the paint ready for me and I ask him "How many gallons" and he say "A few gallons."

"What's the price?

"Listen, about twelve fifty but it's better you come. I want to see you better. I don't want to speak to you any more on the phone."

Q Did he tell you where to meet him?

A Yes.

Q Where?

A A bar on 85th and 37th Avenue. The name is Escorial.

Q What did he tell you about the Escorial bar?

A He wants to see me, ten o'clock in the night.

Q When was that?

A The day after.

Q The 24th?

A Yes.

Q Tell us about the bar.

A It's a Spanish bar.

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Q Spanish-speaking clientele?

A Yes.

Q Did you have a meeting with Ramon Bruson in the bar?

A Yes, around eleven o'clock.

Q With who?

A Two people more but I speak only to Ramon at that time.

Q Where in the bar did the conversation take place?

A I speak at the counter.

Q It was just you and Ramon?

A Yes.

Q What did you say to him and what did he say to you?

MR. SLOTNICK: On behalf o f my client, I object.

MR. KAPLAN: Acts of furtherance.

MR. SLOTNICK: And I ask the jury be instructed on that and do you mind if I make my objection, Mr. Kaplan?

THE COURT: I'll rule on it after I hear the answer.

Q What was said?

A He ask me -- I ask him how many ki he have for

me and he say "Four."

Q Hold on.

You said, you asked "How many ki?"

A Yes.

Q Explain to the jury what is meant by the term "ki."

A That's a kilogram. Over two pounds for a ki.

Q It is over two pounds for one kilogram.

Is that a short term that is used for kilogram?

A Yes.

Q Continue.

A I ask "What is the price?" He told me twelve thousand five hundred and I said to him "That's a high price."

Q Hold on.

You said "It's a high price"?

A Yes.

Q What did he say to you?

A At that moment he said, "The reason I give you four ki, I give you forty-eight grand but you have to speak to Pedro. If it's okay with him it's okay with me too."

Q Did you have a conversation at that time about the quality of the cocaine?

A Yes. I spoke about the quality and he says "Good."

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Q What else did he say, if anything?

A I finished that conversation with him but for the full ki I ask if he got something more and he said he's got some people to give them something.

Q Did he say how many kilos other than the four --

A He said he going to get ten, but he can only give four to me.

Q What other conversation did you have with him?

A He gave me the price, twelve thousand, but I have to see Pedro.

Q What did he say about Pedro?

A He gave me the address to Pedro's house.

Q What did he say about Pedro?

A He said "If it's okay with Pedro and It's okay with me, twelve thousand, so you have to see Pedro first."

Q Did he give you the address for Pedro?

A Yes.

Q What did you do, if anything?

A He gave me the address.

I finish the conversation. I went to my apartment and I put a call to the agent, Gene McElroy --

MR. SLOTNICK: Objection.

THE COURT: The latter part of the answer is stricken.

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A (continuing) And Gene told me —

THE COURT: You can't tell us that.

Q Tell us what happened after you got back to the apartment, not the conversation.

A My apartment?

Q Yes.

A I called up to the agent.

Q What happened after you called Agent McElroy?

A I went to Pedro's house.

Q Approximately what time was that that you went to Pedro's house?

A One a.m.

Q In the morning?

A Yes.

Q May 25?

A Yes.

Q When you got to Pedro's house was Pedro there?

A Yes.

Q Did you see him?

A Yes.

Q Did you have a conversation with him?

A Yes.

Q What did you say to him and he to you?

A I speak to Pedro -- what I speak to Ramon about,

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the four ki, the price -- and I said, "Ramon is going to give me the full ki and forty-eight grand."

Q What exactly did you say to him and he to you?

MR. SLOTNICK: Objection.

THE COURT: I'll allow it.

Q What did Pedro say to you at the time you met him at the house?

A Well, I say, "I come again to see Ramon and I saw Ramon at the bar. I speak to him. He got a full ki and the price he want to give me for forty-eight grand and I say "Is it all right" and he said "Yes."

Q What did he say in addition to that, if anything, about the cocaine?

MR. SANTANGELO: Objection, your Honor, He is leading the witness.

MR. KAPLAN: I am refreshing his recollection.

THE COURT: No, that is not refreshing his recollection.

Q Did he say anything about the cocaine?

MR. SLOTNICK: I object to that. Mr. Kaplan knows better and I ask for the withdrawal of a juror --

THE COURT: Denied.

Go ahead, tell us.

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A He told me the cocaine was good for that price and he make appointment for that day in the afternoon -- make the deal for the business.

Q What did he say? What did Pedro say to you about that day?

A He make appointment for the afternoon between four and six o'clock.

Q Did he say where to meet?

A In the store.

Q Did he say anything about the meeting?

A About the meeting, between four and six o'clock in the store.

Q What else? Did he say who would be there?

MR. SLOTNICK: Objection. Mr. Kaplan is testifying.

MR. SANTANGELO: He is leading the witness.

MR. SLOTNICK: I renew my objection.

I ask for the withdrawal of a juror. If Mr. Kaplan wants to testify he can.

THE COURT: We'll take a five minute recess.

Step down, Mr. Valdez.

(Jury excused)

THE COURT: What is the motion?

MR. SLOTNICK: I ask for the withdrawal of

a juror based upon the following: I find that even though there is an obvious language problem, Mr. Kaplan is testifying from a piece of paper in front of him -- "Did he tell you this and that" and I don't think the Government should gain that advantage.

THE COURT: Motion denied.

MR. SLOTNICK: Exception.

THE COURT: If you want an interpreter we'll do that but not now. They have gone home.

MR. SANTANGELO: How long do you want to work?

THE COURT: I want to get through with this witness but you keep jumping around and we'll never get through.

Bring in the jury.

Come up here, Mr. Valdez.

(Jury entered jury box at 5:20 p.m.)

A L F R E D O V A L D E Z, having been previously duly sworn by the Clerk of the Court resumed the witness stand and further testified as follows:

THE COURT: Mr. Kaplan, ask your questions and try to refrain from leading the witness.

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DIRECT EXAMINATION

BY MR. KAPLAN CONTINUING:

Q Mr. Valdez, after the meeting with Pedro, what if anything did you do?

A Well, I have to see -- on the 25th -- Pedro and Ramon in the store to make a deal.

Q What time did you meet them?

A That day between -- after four o'clock.

Q Now, can you tell us, if you remember, what you did before you went to the store?

A Yes.

The day I finish the conversation with Pedro --

Q Slowly, slowly.

A (continuing) Early in the morning I call to Gene McElroy and Gene and the other agents went to my apartment around two o'clock.

Q You met with Agent McElroy?

A Yes.

Q What if anything happened between yourself and Agent McElroy?

A First, he search me, my apartment.

I tell him the conversation with Pedro and Ramon--

MR. SLOTNICK: Objection.

THE COURT: Don't tell us what you said.

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What happened after that?

THE WITNESS: I told him --

THE COURT: No. Don't tell us what you told him. Then what happened?

THE WITNESS: I explain to the agents --

THE COURT: No. You can't tell us that.

You explained to the agent and he searched you and then, did he do anything?

THE WITNESS: He took me to the lunch and the other agents.

Q After lunch, where did you go? What did you do after lunch?

A He put a suitcase and the money in my car, in the trunk.

Q Do you know how much was in the suitcase?

A I believe about forty-eight grand.

Q Forty-eight thousand dollars?

A Yes.

Q What else did they do with the car if anything?

A Searched my car too.

Q Approximately what time was this?

A This was around three o'clock.

Q After you met with the agents where did you go?

A Went to see the other agents.

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Q You proceeded, did you not, to the store, as you told us -- you went to the store?

MR. SLOTNICK: Please, your Honor, no leading.

THE COURT: That's not leading.

MR. SLOTNICK: He's telling him where he went.

THE COURT: You want the "did" in front of it?

Did you proceed to the store?

THE WITNESS: Yes.

Q When you got there, who was there?

A Pedro opened the door.

Q Did you have a conversation at that time?

A I asked "Where is Ramon?" He said "Downstairs in the basement."

Q Where did you go at that time in the store?

A Downstairs.

Q With whom?

A Pedro.

I found Ramon on the left side of the basement.

Q At that time, were there other people in the store beside Pedro and Ramon?

A No sir.

Q Did you have a conversation with Pedro and Ramon?

A Yes sir.

Q Tell us about that conversation.

A I went downstairs and I found Ramon sitting something on the floor, mixing the cocaine, putting something there that cut it.

Q You have to explain this to the jury.

What exactly -- explain to us -- was Ramon doing on the floor?

A He got a plastic bag with cocaine inside and he got a barrel, I believe, to cut the cocaine and he put it inside and mix it up over there in the basement.

Q Can you tell us what if anything he was doing or did he tell you what he was doing?

A He was cutting that cocaine for the price I paid and he said, "The price you pay, I pay more too. That's my profit. I have to do that" and "The cocaine is good."

Q Ramon said that to you?

A Yes, and Pedro said the same thing. First, he said "I don't have time to do it. He has to do it in front of me."

Q How long did this procedure take place?

A Between thrity and forty minutes.

Q Was anyone in the store beside yourself, Pedro,

and Ramon?

A No.

Q Were you having conversations during this time?

A Yes.

He said he expect more merchandise. I ask him that I want to do a couple of business more.

Q Tell us what if anything you did at that time after you observed the cutting geisgen.

A Yes.

I -- and Pedro walked with me -- outside, so I say, "Listen" --

Q Hold on.

You and Pedro were in the basement?

A And Ramon too.

Q Where did you go from the basement?

A I went upstairs. I got the car closer to the place and I said to Pedro, "I have the money in the trunk of my car. I have to bring it in to you now. Pedro come with me" and Pedro opened the door, walked with me.

I opened the trunk of the car. That was the signal to the agent. He waited outside.

When I open the trunk he know the merchandise is inside and everything is okay.

I open the trunk. I take the suitcase. When I

walk to the door, Pedro with me at that moment, the other agent is coming in.

Before that, I make the signal, when the agent, I have to tell him that the merchandise is in the basement on the ground floor -- "God damn it." That's the signal the cocaine is downstairs.

Q When you say "God damn it" that meant, what?

A It mean that the cocaine was in the basement.

Q When you went to the car door where was Pedro-- excuse me -- car trunk?

A He was with me.

Q You took the suitcase?

A Yes.

Q What did you do after that?

A I walked to the store.

Q With Pedro?

A Yes, and at that moment, come the agents.

Q Do you recall how many agents there were?

A I believe there were a lot of agents.

Q When the agents came in, what did they do?

A They pushed me to the wall with Pedro and I say "God damn it, God damn it." That's the signal the merchandise, the cocaine, was downstairs.

Q What did you observe at that time?

A I don't remember if it was one, two agents. He walked downstairs.

Q I show you what has been marked as Government exhibit 1 in evidence, a photograph, and I ask you if you can identify this particular photograph?

A Yes.

Q And can you tell us what is shown in that photograph?

A Over here, you got a bag of cocaine, the bottle that he mixed the cocaine.

Q Is that photograph an accurate picture of the basement on May 25 as you saw it?

A Yes.

Q Now, there are some marks that have been made by you on the picture.

Will you explain the marks made by you on the picture?

A The mark of "C" that's the cocaine, the little package.

Q What are those little packages on the side?

A Cocaine.

Q And the big package?

A Cocaine too.

Q And some of the other things?

A The bottle.

Q What is the bottle for, if you remember?

A It's lactose.

Q What's the word?

A Dextrose -- to cut the cocaine.

Q What did you observe? What was done with the bottle and the cocaine?

A Excuse me?

Q What did you observe, if anything, with the bottle -- the contents of the bottle and the cocaine -- what was being done, if anything?

Do you understand the question?

A No sir.

Q You see a bottle in the picture. What did they do with the contents of the bottle?

A That is what he put in the cocaine. He mix it. He can't sell it pure. That's the reason he --

MR. SLOTNICK: Objection.

THE COURT: He cut it?

THE WITNESS: Yes.

Q Did he tell you about that?

A That he have to do that to make a profit. That's the way he did it.

MR. KAPLAN: May we show the picture to the

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jury?

THE COURT: No. We will show it afternoon.

Let's just get on with testimony.

Q Now, at the time, May 25, 1972, or generally, May of 1972, were there any pending charges against you in any court?

A No sir.

Q Were you under arrest --

A No sir --

Q (continuing) or indictment or were you awaiting conviction?

A No sir.

Q Or awaiting sentence?

A No sir.

Q Were there any threats made by any of the agents or any law enforcement officials to you?

A No sir.

Q Were there any promises, other than the money, that was made to you?

A No sir.

Q And can you tell us, at the time of the testimony here in this courtroom, did you have any pending charges or threats or promises?

A No sir.

Q Are you getting paid for your testimony here today?

A No sir.

MR. KAPLAN: Thank you.

Nothing further.

At this time, may the picture be shown?

THE COURT: Let him cross examine. We'll show the picture.

(continued on next page)

Q Mr. Valdez, did you get paid for this case?

A Yes.

Q How much money did you get paid for this case?

A I believe about 1500.

Q $1500?

A Yes.

Q And who paid you for this case?

A Gene McElroy.

Q Did he pay you by check or with cash?

A Cash.

Q Did you give him a signed receipt for the money he gave you?

A Yes.

Q Did he pay you $1500 plus expenses?

A I included that.

Q Excuse me?

A Including the expense.

Q Including expenses? Did you indicate to him what your expenses were?

A Excuse me, sir?

Q Did you tell him what your expenses were?

A What my expense of - - I have to left the job

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some time, too, a couple of weeks. That's what expenses.

Q Are you telling this jury that you left your job for a few weeks to work on this case?

A Yes.

Q Didn't you testify that you went to the store and met my client on five or six occasions?

A Yes.

Q And other than the last occasion, which you say happened for forty minutes, isn't it true that you testified that you only spoke to my client five minutes on each occasion?

A Yes.

Q What was your job during this period of time?

A Garage attendant, parking attendant.

Q Garage parking attendant?

A Yes.

Q Was this the first arrest that was as - - came about as a result of your work?

A Say it again, please.

Q Was my client the first man arrested as a result of your work?

A I can't understand that.

Q Did you tell Mr. McElroy to arrest anybody

before my client was arrested?

THE COURT: Did you understand the question?

THE WITNESS: Yes, I understand the question. I have to remember.

THE COURT: You have to remember.

All right.

A (Continuing) I don't remember before arrest. I work with him. I work with him in Miami, too.

Q Well - -

MR. KAPLAN: Can we ask the question be rephrased?

THE COURT: Rephrase it.

MR. KAPLAN: As to other cases?

MR. SLOTNICK: I'll get back to it.

THE COURT: Yes.

Q Let's start with the - - with December of 1969. In December of 1969, you were arrested; is that correct?

A Yes.

Q What were you arrested for?

A Possession.

Q Possession of what?

A Cocaine.

Q How much?

A One key.

Q And how much was that valued at that time?

A 10,000.

Q Who arrested you?

A Miami.

Q Miami what? Federal agents?

A Yes.

Q State agents?

A The Federal.

Q Where did they arrest you?

A Excuse me?

Q Where did they arrest you?

A Outside my house.

Q Outside your house?

A Yes.

Q Had somebody just delivered the cocaine to you?

A I have to ask a question.

THE COURT: No. Someone delivered the cocaine to you at your house?

THE WITNESS: Yes.

Q Then you were arrested with possession of one kilo of cocaine?

A Yes.

Q Were you a cocaine user at that time?

A Never use.

Q Never used it?

A Never.

Q So therefore, you were going to sell the cocaine; is that correct?

MR. KAPLAN: Objection.

THE COURT: Sustained.

MR. KAPLAN: Irrelevant.

Q Now, how many times before you were arrested were you dealing in cocaine?

A Never.

Q This was the only time that you dealt in cocaine?

MR. KAPLAN: Objection. No testimony that he dealt in cocaine, your Honor. Convicted of possession.

MR. SLOTNICK: All right. I will withdraw the question.

THE COURT: Possession.

Q The only time you had possession of cocaine was when you were arrested for it; is that correct?

A Yes.

Q No other time?

A No, sir.

Q That was December of 1969; is that correct?

A Yes.

Q Now, when did you go before a judge and plead guilty?

A I believe in 1970.

Q May of 1970?

A I believe that.

Q May of 1970.

You didn't go to trial?

A No, sir.

Q You told the judge you were guilty?

A Yes, sir.

Q What were you sentenced?

Isn't it true you were sentenced about a year later, May of 1971?

A I don't remember exactly what is the date.

Q About?

A I can't remember.

Q You can't remember when you were sentenced?

A I can't remember the date.

Q Isn't it true that you testified earlier

that you were sentenced about a year after you pled guilty?

A Yes.

Q Is that true?

A Yes.

Q So therefore, you were sentenced in about May of 1971? What was your sentence?

MR. KAPLAN: Objection, your Honor. He is not answering questions.

THE COURT: All right. In any event, it is a year later. Go ahead.

Q What was your sentence?

A Three years probation.

Q Three years probation?

A Yes.

MR. KAPLAN: I'm going to object to him repeating answers, your Honor.

THE COURT: Yes. Do not repeat.

MR. SLOTNICK: Judge, you said you would give me the same latitude as Mr. Kaplan.

THE COURT: That is form. You are repeating the answer. It does not make it any more effective because you repeat it.

All right.

Q When did you first start working with

Agent McElroy?

A 1970.

Q Before you were sentenced?

A Yes.

Q But after you pled guilty?

A I - - can I ask that question? I say - - I working in Miami before, before I working with Agent McElroy.

Q When did you first start working with the federal agents?

A 1970.

Q That's before you were sentenced?

A That was in Miami, yes.

Q Was that before you pled guilty?

A No, after pled guilty.

Q After you pled guilty?

Now, did you have any deals with the Bureau's attorney or the federal agents, that in return for your cooperation you wouldn't go to jail?

A No, sir.

Q Were you afraid of going to jail?

A No, sir.

Q Were you concerned that you might go to jail?

A Excuse me?

Q Were you concerned that you might go to jail?

A I don't understand that word.

THE COURT: He does not understand the word "concerned."

MR. SLOTNICK: I understand that, your Honor.

THE COURT: All right.

Q Did you think, were you worried about the fact that after being arrested you would go to jail?

A Yes.

Q Were you worried about that?

A I don't think so.

Q All right. You weren't worried about it?

MR. KAPLAN: Objection, your Honor. I do not believe he understands the word. Can we have it rephrased?

THE COURT: I do not think he understands it. "Worried" may be simple to us but it may be difficult for other people.

MR. KAPLAN: It's also a conclusion, your Honor

THE COURT: No, it is not a conclusion.

MR. SLOTNICK: Please, Mr. Kaplan.

BY MR. SLOTNICK:

Q Did the U.S. Attorney or the federal agents tell the judge you were cooperating with them before he sentenced you to probation?

THE COURT: If he knows.

Q (Continuing) If you know?

A I don't know.

Q Were you in court?

A Excuse me?

Q Were you in court when you were sentenced?

A Yes.

Q Did you hear the U.S. Attorney speak to the judge?

A He speak to the judge, I don't remember.

Q You don't remember what he said?

A No, sir.

Q This is before you were sentenced? Did anybody ever tell you, before you were sentenced, that the judge would be told you cooperated?

A No, sir.

Q No one ever told you that?

A No, sir.

Q Do you know whether anybody ever told the judge you cooperated?

A I don't understand that.

Q Did you have a lawyer?

A That time?

Q Yes.

A Yes.

Q Do you know if your lawyer spoke to the judge and told him you had cooperated?

A I don't think so.

MR. KAPLAN: I object to this line of questioning as being irrelevant and prior to the - -

MR. SLOTNICK: It shows motivation.

MR. KAPLAN: And prior to the time in question, your Honor.

THE COURT: He says he cooperated. Of course it is motivation.

Q Do you remember what went on in the courthouse that day you were sentenced?

A Yes, I remember what day.

Q Tell us what happened.

A I was there and two-year probation. Three-year probation.

Q Then you worked in Miami; is that correct?

A Yes.

Q Did you get paid while you were working in Miami?

A That time? No.

Q You never got paid while you were working in Miami?

A No.

Q Did you then move to New York?

A Excuse me?

Q Did you then move to New York?

A I moved myself, yes.

Q When you were working for the Federal Government in Miami, what kind of job did you have?

A I worked in a laundry.

Q How much were you earning a week?

A About 149 a week.

Q $149 a week?

A Yes.

Q You were married and had children; is that correct?

A Yes.

Q Do you remember where you lived?

A At that time?

Q At that time, in Miami?

A Yes.

Q Where did you live?

A In a house.

Q Do you remember how much rent you

MR. KAPLAN: I am going to object to this, your Honor. This is so much prior to the indictment as to be irrelevant.

MR. SLOTNICK: I am attempting to show standard of living and to show the jury what this man --

MR. KAPLAN: I object to him making comments on the record too, your Honor.

THE COURT: I would say, it is kind of remote.

Q How long did you work in Miami?

A A few months. I live only a few months in Miami.

Q Then you moved to New York?

A Yes.

Q Then you began to work with Agent McElroy; is that correct?

A Yes.

Q When was the first time Agent McElroy gave you money?

A I don't remember exactly what day.

Q Was it the $1500 he gave you for this case?

A I can't remember exactly, sir, these questions.

Q When you moved to New York, did you live in a house?

A Apartment house.

Q You lived in an apartment. How much rent were you paying in that apartment?

A 180.

Q $180 a month. How much were you earning as a garage attendant?

A The salary at that time about a hundred - - I believe 150 a week. 145. I don't remember exactly.

Q Isn't it true that you earned a total of about $3,000 as a garage attendant?

MR. KAPLAN: Objection.

Q (Continuing) In 1970?

MR. KAPLAN: I object to the question as misleading, your Honor.

MR. SLOTNICK: I'm asking if it's true, your Honor.

A (Continuing) I worked outside, too.

THE COURT: Ask him.

Q I am talking about as a garage attendant.

Did you earn a total of $3,000 as a garage attendant?

A That year?

Q For 1972?

A Yes.

Q That's all?

A My wife, she working, too.

MR. KAPLAN: Objection, your Honor. That question again is misleading.

MR. SLOTNICK: Misleading?

THE COURT: I do not know if it is misleading. He ought to know how much she earned.

MR. KAPLAN: When he says "That's all," it doesn't imply other - -

MR. SLOTNICK: I am talking about a garage attendant. We will get to the rest.

BY MR. SLOTNICK:

Q That's what you earned; is that correct?

A Yes.

Q How much did you earn as a result of your being an informer with the Federal Government, for 1972?

A I don't remember exactly. Maybe about - - two grand.

Q $2,000?

A Maybe less. Yes.

Q Maybe less?

A Yes.

Q Of which $1500 was - - resulted from this case?

A Yes.

Q You had odd jobs; didn't you?

A Yes.

Q What other odd jobs did you have?

A Well, when I work in a garage, I work in - - do carpentry, plumbing.

Q You do carpentry and plumbing. Whom did you do carpentry for?

A Myself.

Q What did you do? Did you build cabinets?

A Sometimes.

Q For whom?

A For everybody who needed them.

Q Could you name me one person whom you built a cabinet for?

MR. KAPLAN: Objection.

THE COURT: Sustained.

MR.SLOTNICK: Credibility.

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THE COURT: No.

Q How much did you make building and selling cabinets, Mr. Valdez?

A I don't know how much.

Q You don't know. Did you file an income tax return for the year 1972?

A I file income tax every year.

Q That's correct. What was your total gross income on your income tax for 1972?

A Close to 6,000.

Q Close to $6,000. Your total gross income?

A Yes.

Q Did you drive a car in 1972?

A Yes. Old car. '64 Dodge.

Q You paid $180 a month rent; is that correct?

A Yes.

Q For a year that you weren't earning $180 a week; is that correct?

A Excuse me?

Q You weren't earning - -

MR. KAPLAN: Objection as a conclusory - -

THE COURT: Yes.

MR. SLOTNICK: One moment, your Honor.

Q Do you know a man by the name of Miguel

Alverez DeVega?

A Who?

Q Miguel Alverez DeVega?

A I don't remember that name.

Q You don't remember the name?

A No.

Q Do you remember a man by the name of Urbano Ramos?

A No.

Q Now, you testified that you met my client through a man by the name of Louie; is that correct?

A Yes.

Q Do you know Louie's last name?

A No, sir.

Q Do you know where Louie lived?

A No, sir.

Q When was the last time you saw Louie?

A A long time ago.

Q Do you know where he is now?

A No, sir.

Q When was the last time you saw Louie?

A Exactly, I don't know when, but I believe maybe saw him before he left this country.

Q Before he left this country? Do you

know what country he went to?

A Who?

Q Louie.

A I don't know. Before I left the country.

Q Before you left the country? At the time you met Louie, you were working for the Federal Government; is that correct?

A Yes.

Q Did you make any notes about Louie?

A Yes.

Q Did those notes include his last name?

A No. I don't have to.

Q Do you have those notes?

A I don't have the notes.

Q Who gave - -

A All I gave the name, the phone or the place which he - - people I know - - where he live, where the store - -

Q We are talking about Louie now?

A Yes.

Q You made notes about Louie?

A Yes.

Q What did you do with those notes?

A I don't say I make note. I spoke in person. I gave all reference about the people. I don't say a - -

I make a note.

Q At the time you met Louie he introduced you to my client?

A Yes.

Q You were working for the Federal Government; right?

A Yes.

Q Did you tell Mr. McElroy about Louie?

A Yes.

Q Did you tell him his last name?

A No. Louie - - I know the guy for Louie.

Q Did you have an address for Louie?

A Yes.

Q You had an address?

A At that time. To repair a television.

Q But did you have a home address for Louie?

A I don't have a home address. He live - -

Q You didn't have a last name?

A Maybe he have a last name but I don't have to know the last name.

Q What's the address of his television repair store?

A I believe it's 103rd Street.

Q And what?

A 103rd Street. That's in Queens.

Q 103rd Street in Queens?

A Yes.

I know where I have to go but sometime I forget the address.

Q Do you know if the store is still there?

A I don't know.

Q Did you ask Agent McElroy whether the store was still there?

MR. KAPLAN: Objection to that, your Honor, as to what he did with respect to Agent McElroy.

THE COURT: Sustained.

Q You met Louie - - where did you first meet Louie?

A Before I meet that two people.

Q Where?

A I - - before, in the store.

Q In his television store?

A Yes.

Q Do you know the name of his television store?

A In the front it say L.M. TV Repair.

Q I see. That's where you first met him?

A Yes.

Q Mr. Valdez, do you remember me asking you questions on February the 28th, 1974?

A Excuse me?

Q Do you remember me asking you questions?

A Yes.

Q On February 28, 1974?

A Yes.

Q You were on the witness stand and I asked you questions?

A Yes.

Q Do you remember that?

A Yes.

Q On Wednesday and Thursday of last week?

A Yes.

Q Do you remember that?

A Yes.

Q Do you remember asking - -

MR. KAPLAN: May we have that marked, your Honor, as an exhibit?

THE COURT: It is not necessary.

Q Do you remember me asking you this question and you giving me these answers?

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"How did you meet Louie?"

That was my question.

And do you remember giving me the answer, "I met him before"? Do you remember that answer?

A Well, I can't remember that exactly.

Q But is that approximately what you said?

A Maybe.

Q Do you remember saying "I could say I know Louie from someplace in any bar"? Do you remember that answer?

A I said "The bar."

Q Right. Do you remember you said that to me?

A Yes. I never see the guy in the bar. I never meet him in a bar.

Q Do you remember this question? "You can say that and that will satisfy me"?

And do you remember giving this answer, "I can't remember where I met that guy Louie. I can't say in a bar or anyplace because I don't remember"?

A That's right.

Q So you don't remember where you met Louie?

A The first time I don't remember where I met but I know where I met after that.

Q Do you remember the following question

that I asked you?

"Did you report Louie to Agent McElroy"?

A Excuse me?

Q Did you report - - I asked you this question. "Did you report Louie to Agent McElroy?" And remember you giving me the answer, "I can't - - I don't see him no more"?

Remember that answer?

A I don't remember the answer. Maybe I did. Maybe I make a mistake.

Q Do you remember this question that I asked you last week?

"At that time were you cooperating with the Federal Government when you met Louie?"

Do you remember answering "Yes"?

A Excuse me?

Q "At that time were you cooperating with the Federal Government when you met Louie?"

And do you remember answering "Yes"?

A Yes.

Q Do you remember the following question, "Did you take Louie's name or address down?"

And do you remember the answer you gave me? "I can't - - he didn't have - - he don't have nothing. I

wouldn't waste my time for that moment"? Do you remember that?

A Yes.

Q Do you remember the question I asked you, "Did you ever tell anybody about Louie in any official report anywhere"? And do you remember the answer, "I don't remember"?

A I say "I don't remember," but I remember.

Q But you didn't remember last week?

A No, sir.

Q Was Louie tall?

A Excuse me?

Q Was Louie short?

A Same like you.

Q Was he fat, skinny?

A Skinny.

Q Do you know where he was from?

A No.

Q He was Spanish-speaking?

A Yes.

Q Couldn't tell where he came from?

A Can't remember now.

Q You can't remember now.

Did he have a wife?

A I don't know.

Q Do you remember me asking you this question, "Try to remember where you first met Louie"? Do you remember this answer, "I can't remember exactly if it was a bar or a street or someplace"?

A Yes.

Q Do you remember this question? "The first time you saw Louie in a bar or a street, the first time that you saw Louie in a bar or on the street and you were introduced, who introduced you to Louie?"

Do you remember the answer you gave? "I can't remember who introduced him to me or I met him in a bar and I was introduced to him."

A That's the truth. I can't remember who introduced him to me.

Q You don't remember who introduced Louie?

A No, sir.

Q Didn't you take a note down for the federal reports?

A I don't have to.

Q You don't have to?

A No, sir.

Q If I wanted to subpoena Louie, could you tell me where he was now?

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A No, sir. I don't know where he is now.

Q You don't know his last name?

A No, sir.

Q It hasn't come to you over the last week?

A I don't know his last name. That's the truth.

Q You don't remember who introduced you to Louie?

A I can't remember that, too.

I know I went once to the place he repair my television there. That's tried to make the connection with Louie.

Q Isn't it true that last week you said to me that you met him in a bar or in the street?

A I didn't say I met in a bar. I say I can't remember where I met him. That's the truth.

Q Didn't you say it could have been in a bar or the street?

A Could be anyplace. The first time I can't remember. I know the second time, yes.

Q Isn't it a matter of fact that you just made up Louie?

MR. KAPLAN: Objection, your Honor.

MR. SLOTNICK: A credible question, your Honor.

THE COURT: Let him answer it.

Q (Continuing) Yes or no?

MR. KAPLAN: Let the witness answer, your Honor?

MR. SLOTNICK: Yes.

THE COURT: That is what I said. You are agreeing.

THE WITNESS: Excuse me?

Q Isn't it a matter of fact that you made up Louie in your own mind?

A No, sir.

Q By the way, you say my client gave you a card with his business on it?

A Yes.

Q What color was the card?

A I believe it was a green or white. I can't remember the color.

Q You can't remember the color?

A No, sir.

Q Do you have the card?

A I don't have it. I give it to the agent at that time.

MR. SLOTNICK: Will the Government produce the card?

MR. KAPLAN: We don't have the card anymore.

Q What did the card say on it?

A It got the both name and both phone, Ramon and Pedro.

Q And the address?

A Yes.

Q Which address?

A To the store.

Q Oh, the address to the store.

By the way, before May 25th, before May - - you understand what I am saying? Before May 25th, when you went to the store, do you know if there was an agent outside watching you walking into the store?

A I don't know.

Q You don't know. So if I were to ask you whether you could produce anybody to prove you went to the store on those days - -

MR. KAPLAN: Objection.

THE COURT: Sustained.

A (Continuing) I know May 25th - -

THE COURT: You do not have to answer that.

THE WITNESS: Oh. Excuse me.

Q By the way, when you went - - you went to my client's house; is that correct?

A Pedro?

Q Yes.

A Yes.

Q Do you know if anybody followed you to the house, take a little note to see you go in and out of the house?

A I don't know.

Q Did you speak to my client on the telephone?

A No.

Q Did you ever have a phone conversation with anybody in this case?

A With Pedro?

Q With Pedro?

MR. KAPLAN: That wasn't the original question, your Honor.

A (Continuing) On the phone?

Q A phone conversation? On the telephone?

A No.

MR. KAPLAN: Your Honor, he changed the question. He said "anybody" and then "Pedro." Let him answer the first question and then the second.

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MR. SLOTNICK: I'll get to that.

THE COURT: That is all right.

Come on.

Q Did you ever have a phone conversation with Ramon?

A Yes.

Q At the time you had the phone conversation with Ramon, you were working for the Government; is that correct?

A Yes.

Q Did you report the phone conversation?

A No, sir.

Q Did anybody else listen on an extension?

A I don't know. I don't think so.

Q Other than yourself, was there anybody that could testify about that phone conversation?

A No.

Q By the way, when you went to the store on May 25, is it your testimony that when you went out to the car, to the trunk, my client walked with you to the trunk?

A Yes.

Q He stood with you at the trunk as you opened it up; is that correct?

A Yes.

Q And then you took the bag out and he walked back with you into the store?

A Yes.

Q That's your testimony?

A Yes.

Q Is it also your testimony that you had a special signal that was arranged in case the cocaine was in the basement?

A Yes.

Q Would you describe the store for us?

Withdrawn.

What was that special signal?

A "God damn it."

Q And did you discuss this with the agents to make sure that it was that kind of signal?

A Yes.

Q And it's still your testimony that after the first deal in which you were caught with cocaine, that you never dealt in cocaine before or after that?

A Yes.

Q Last week I asked you some questions about the possibility of your going to jail and I asked you, when you were arrested, were you worried about going

to jail? Do you remember that question?

A Yes.

Q What was your answer?

A No.

Q Did I then ask you this question, a little later on, and did you give me this answer:

"And you were worried about the possibility you might go to jail when you were arrested?"

And did you say, "I think everybody worry for that."

A I say "everybody"?

Q Yes. Didn't you say that?

A I don't include everybody.

Q Excuse me?

A I don't include everybody.

Q Well, did you answer that way?

A Maybe.

Q So one time you said you weren't worried and the second time you say you were worried?

MR. KAPLAN: Objection.

THE COURT: Sustained.

MR. KAPLAN: That's not - -

THE COURT: Sustained.

Q Do you have your income tax return for

1972?

A Excuse me?

Q Did you bring your income tax return for 1972?

A Bring with me now?

Q Yes.

A I don't have with me now.

MR. SLOTNICK: Does the Government have?

MR. KAPLAN: Of course the government doesn't have his tax returns.

Q After the arrests were made in this case, when did you get paid?

A Excuse me?

Q How long after my client was arrested did you get paid?

A Exactly, I don't remember. A couple of weeks. Maybe month.

Q Didn't you tell me last week that you got paid a week later?

A That's what I said. I don't remember exactly. A couple of weeks. Maybe month.

Q In going to Central America, who paid for your flight?

A Excuse me. I paid.

Q Who paid?

A Yes.

Q Who paid for the flight?

A I paid.

Q You paid for it?

A Yes.

Q Did you travel to Central America first class?

A No, sir.

Q Well, did I ask you the question last week, "Did you go first class," and did you say "Yes"?

A No, sir.

Q On Page 60?

A No, sir. I didn't say first class.

MR. KAPLAN: I'm going to object to that, your Honor.

THE COURT: Sustained.

MR. KAPLAN: If that was the testimony, it was not so.

THE COURT: I will sustain it.

MR. SLOTNICK: May I show it to him?

THE COURT: You can show it, but I will sustain it.

Q Does this refresh your recollection as to the question and answer?

THE COURT: It cannot refresh his recollection. That was not his answer. That is an error. The court says it is an error.

MR. SLOTNICK: Okay. I will abide by that.

THE COURT: Do not argue about that. That was an error.

Q By the way, during 1972 - - my client was arrested two years ago; is that right? About two years ago?

A I believe that.

Q And you got paid the $1500?

THE COURT: I think we have been all over this. We started out with that.

MR. KAPLAN: I'm going to object to that, your Honor, as being repetitive.

THE COURT: We have been all through this.

MR. SLOTNICK: I'm going to something, your Honor.

THE COURT: I know. We have been all

through it.

Q What did you do with the $1500?

MR. KAPLAN: Objection, your Honor, as being irrelevant, after the facts of the case.

Q During 1972, did you give your father any money?

A No.

Q When I asked you this question did you give me this answer last week?

"How did you keep the money, the $1500 the agent gave you?

"A I used it to go to Central America.

"Q But that was a year later. What happened during the year?

"A I gave it to my father."

Does that refresh your recollection?

A No, sir.

Q Did you give me that answer?

A No, sir. I believe maybe make a mistake but ask - - I give money to my father. I give money to my father. He keep it for me.

Q So you did give the money to your father?

A Yes, but he keep it for me.

Q Right. He held money for you?

A Yes.

Q Do you remember me asking you about you giving money to your father and your saying you didn't? Last week?

A Yes, but that's not the reason I understand that. I say - - you say "help my father." That's what I want to understand that.

Q I see. Did you have any bank accounts?

A Excuse me?

Q Did you have any bank accounts?

A No, sir.

Q Your father kept cash for you; is that correct?

MR. KAPLAN: Objection. Irrelevant, your Honor, immaterial, nothing to do with the case.

MR. SLOTNICK: No.

MR. KAPLAN: Misleading.

THE COURT: It is much easier for him to ask the question.

MR. SLOTNICK: I object to Mr. Kaplan's speeches.

THE COURT: Answer the question.

39 Valdez - cross

THE WITNESS: Say it again.

Q Did your father hold cash for you?

A Yes.

THE COURT: What kind of cash?

MR. SLOTNICK: Cash.

THE COURT: I thought you said "cold cash."

MR. SLOTNICK: No, "hold cash."

THE COURT: Oh. I was wondering what that was supposed to be.

Q By the way, where did you live in Queens? Do you remember the address?

A Excuse me?

Q Do you remember the address where you lived in Queens?

A Yes. Ithaca Street.

Q What was the address?

A 40-17.

Q 40-17 Ithaca Street?

And at the time you lived in that apartment - - by the way, how many bedrooms did you have?

A Two.

Q At that time you were working in a garage?

A Excuse me.

Q You were working in a garage?

A Yes.

MR. SLOTNICK: I'll be very short, your Honor.

THE COURT: I think so. I do not want to in any way restrain or restrict you, but I think so.

MR. SLOTNICK: No. I am almost finished, your Honor.

THE COURT: I would assume so.

Q Were you asked this question last week and did you give this answer?

THE COURT: How much cash did you give your father in 1972?

"A I never gave cash to my father."

MR. KAPLAN: Objection, your Honor. Again, the question is misleading.

MR. SLOTNICK: He can explain, Judge. I will not leave it cold like that.

Q Did you understand that question that way?

A I don't mean that.

Q Did you answer the question that way; yes or no?

THE COURT: He has already explained.

He said he said that but he gave it to him to hold for him. That is what he says.

It is up to the jury to believe what he did with it. He already explained it.

Q By the way, at the time you met my client, did you have any cases pending with regard to cases you had made, arrests that had occurred?

A No.

Q Isn't it true that from the time you were caught in Miami, the first arrest that the government made because of your work was my client?

A No, sir.

Q The second arrest?

A No, sir.

Q By the way, did the government ever pay you any money when arrests didn't occur?

A Excuse me, sir?

Q Did the government ever pay you any money without an arrest?

A Sometime. Paid expense.

Q And when you were "paid expenses," when they paid you expenses, did you list the expenses for the agent or did he just give you the money in cash?

A I explained how much money I spent it. I have to

sign a paper.

Q He gave you the money in cash?

A Yes.

Q How much were those expenses?

A All depend.

Q A thousand dollars?

A No, sir.

Q Fifty dollars?

A Sometimes. Sometimes more.

Q By the way, you testified that you saw a fruit business?

A Yes.

Q Do you remember a man by the name of Chino?

A No, sir.

Q You don't?

A No.

Q Where was this fruit business?

A Excuse me?

Q Where was this fruit business?

A Same place, 35th between 90th and 91st.

Q Same place where my client kept his paints?

A Yes.

Q Did you see a man outside taking care of the fruit store?

A No, sir.

Q As a matter of fact, didn't it appear to you that it was strange there - -

MR. KAPLAN: Objection, your Honor.

THE COURT: Sustained.

Q Did you see fruit for sale?

A Only few.

Q Only a few.

Did you know Chino was Urbano Ramos?

A No.

Q Do you know the fruit man?

A Excuse me?

Q Did you know the fruit man? The fruit man?

A I don't know who was the fruit man over there.

Q You never saw anybody in front of the fruit store?

A Always when I go I go after 4:00 o'clock, between four, six, and the store was closed that door.

Q I see. You never went before that?

A No.

Q By the way, on the days that you met my client, did you write down the notes when you met my client?

A No.

Q You were working for the government at that time?

A Yes. Always I call him out.

Q You didn't write any notes?

A I don't have to write.

MR. SLOTNICK: That's it.

THE COURT: All right. I think we will probably recess now. We won't finish with him tonight. So we will probably recess until tomorrow morning at 11:00 o'clock because I have to pick another jury in between this one.

Okay. Step down for now. We will finish with you in the morning.

THE WITNESS: Yes, sir.

THE COURT: Do not discuss the case. Keep an open mind.

(The following occurred in the absence of the jury.)

THE COURT: Okay. Good night.

(Whereupon, at 6:15 p.m., a recess was taken until March 6, 1974 at 11:00 o'clock a.m.)

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

- against - 72-CR-644

PEDRO MORELL and
RAMON BRUZON,

Defendants.

----------x

United States Courthouse
Brooklyn, New York

March 6, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE MARK A. COSTANTINO,
U. S. D. J.

HENRI LeGENDRE
COURT REPORTER

Appearances:

EDWARD J. BOYD V, ESQ.,
United States Attorney for the
Eastern District of New York

BY: K. KAPLAN, ESQ.,
Assistant U.S. Attorney

B. SLOTNICK, ESQ.,
and
G. SANTANGELO, ESQ.,
Attorneys for the defendants.

* * * * *

THE CLERK: U.S.A. versus Pedro Morell and Ramon Bruzon.

THE COURT: Bring the jury in.

(Whereupon, jurors entered the courtroom and are now seated in the jury box.)

A L F R E D O V A L D E Z, recalled as a witness, having been previously sworn, resumed the witness stand and further testified as follows.

THE COURT: For the record, Alternate Juror Number 1 called in that she's sick with the flu.

Proceed, Mr. Santangelo.

MR. SANTANGELO: Thank you, your Honor.

CROSS EXAMINATION

BY MR. SANTANGELO: (continuing)

Q Mr. Valdez, I show you a picture which has been previously marked defendant's exhibit B in evidence, and ask you to tell the jury what that picture describes.

A This describes part of the top floor of the front of the store. I only remember the refrigerator.

Q What about the trap door?

A The trap door too.

Q Is that the trap door that leads to the

basement?

A Yes.

Q Can you tell me whether the staircase leading from the trap door leads towards the back or the front of the store?

A Excuse me. Say that again.

Q Tell the jury whether the stairs which go from the trap door down into the basement go towards the front of the store or the back of the store.

A That's inside to the store, to the right side.

Q That's where the trap door is, on the right side?

A Yes.

Q And there are stairs leading from the trap door down into the basement; is that right?

A Yes.

Q When you walk down the stairs, do you walk towards the front of the store, or do you walk towards the back of the store?

A Back of the store.

Q On May 25, 1972, the day that the arrest was made, when you first entered the store, whom did you see first?

A Pedro.

Q And where did you see him?

A I knocked on the door and he opened the door for me.

Q And you saw Pedro?

A Yes.

Q And did you ask Pedro anything?

A I asked him where is Ramon.

Q You did not see Ramon on the ground floor?

A Correct.

Q And did Pedro say anything to you?

A Yes, "He's downstairs in the basement."

Q And he meant when he said he's downstairs in the basement?

A Ramon.

Q And then what happened?

A I walked, I went downstairs.

Q Did you walk down alone?

A With Pedro.

Q And you saw who?

A Ramon downstairs.

Q When you got to the bottom of the stairs, where was Ramon in relation to you?

A To the left side, and he prepared the cocaine there.

Q When you got down to the bottom of the stairs

Ramon was on your left side; is that correct?

A Yes.

Q Now, can you describe what he was doing when you got downstairs?

A He mixing the cocaine, put a cut in there.

Q Was he standing or was he sitting?

A Sitting.

Q Was he sitting on the floor?

A No, he got something there.

Q A box or something like that?

A I don't remember exactly what he got.

Q Was he close to the floor?

A Yes.

Q Can you describe what you saw in front of him?

A Well, I described they put -- he got cocaine there, he mix the bag.

Q What did you see? Did you see bags in front of him ?

A Yes.

Q What kind of bags?

A Plastic bags.

Q How many?

A I don't remember how many.

Q Well, you were there to buy cocaine, were you not?

A Yes.

Q And you were there to buy four kilos of cocaine; is that correct?

A Correct.

Q You went in there for that purpose; isn't that right?

A Yes.

Q So you went down to the basement, you were looking for the cocaine, weren't you?

A Yes.

Q When you saw Ramon sitting there, didn't you notice how many bags was there?

A I saw when he prepared, before he got to my bag, he mixing the cocaine.

Q There was only one bag?

A Yes.

Q How big was the bag?

A That big.

Q And then what did he put into that big bag?

A He put some cut in there.

Q Where did the cut come from?

A In the bottle.

Q Now, I show you Government's exhibit 1 in evidence and I ask you whether that picture shows the bottle where the cut came from?

A Yes.

Q It does?

A Yes.

Q Would you take this pencil and circle where the cut came from?

A (Witness doing as instructed.)

Q Now, how long were you in the basement with Ramon?

A I believe both Ramon and Pedro.

Q How long were you there?

A I believe about 30, 40 minutes.

Q And during this 30 or 40 minutes, what were you doing?

A I'm behind, I speak to the both.

Q And you were talking to Ramon?

A And Pedro.

Q And all this time that you were talking to Ramon, Ramon was mixing; is that correct?

A Correct.

Q And what he was mixing it with was one big

plastic bag and a bottle?

A Fixing half and fixing the other half.

Q There were two big bottles?

A Had only one bag, fixing only one bag.

Q He poured something from the bottle into this one bag?

A Yes.

Q And he took the bag into both his hands?

A Yes.

Q And he shook the bag back and forth like this (indicating)?

A Yes.

Q He continued doing this, shaking this bag back and forth for about 30 or 40 minutes?

A Well, he rested.

Q Did he take that big bag and pour what was in it into another bag?

A Excuse me?

Q After he finished shaking this big bag, did he pour what was in it into another bag?

A Yes.

Q How did he do that?

A Pedro helped and he put it on the side with the other one.

Q Somebody held the plastic bag?

A Yes.

Q And then Ramon picked up the big plastic bag?

A The big one.

Q And he poured it?

A Yes.

Q Into the other plastic bag?

A Yes.

Q How many plastic bags did he make out of the one?

A I believe he made about four.

Q Made about four?

A Yes.

Q Now, after he finished pouring from the big plastic bag, was there anything left in that big plastic bag?

A I don't remember.

Q Did you see him finish pouring from that big plastic bag into the other four?

A Almost.

Q Did you see it?

A I must.

Q Did you see him place those four plastic

bags anyplace?

A On the floor.

Q After he placed them on the floor, did he do anything?

A I don't understand that.

Q After he finished pouring from the big plastic bag into the four smaller ones, and he put them on the floor, did he do anything else?

A After he finished, I went for the money.

Q Were the bags opened when you left for the money?

A Excuse me?

Q Were the bags opened when you left for the money?

A When he finished, once he closed it up.

Q He tied it up?

A Yes.

Q Before that they were opened?

A Yes.

Q And the big one was opened too; is that right?

A Before the big ones were opened.

Q I show you a picture marked Defendant's Exhibit A in evidence, and I ask you if you recognize that

as part of the basement of that store?

A I believe it's part of the basement.

Q Now, prior to the day of the arrest, which was May 25, 1972, when was the last time that you had gone to that store to see either Pedro or Ramon or both of them?

A Few days before.

I don't have any date.

Q Would it be the day before?

A No.

Q You did not go the day before?

A No.

Q Did you go on the 23rd?

A No.

Q Now, you testified that every time you did go to that store, both Pedro and Ramon were there; is that correct?

A Correct.

Q Do you recall sometime after May 25 that you signed a statement for Agent McElroy?

A Yes.

Q And that statement was signed in front of Agent McElroy and Agent Tierney; is that right?

A Correct.

Q And in that statement you told them what had happened?

A I explained.

Q You explained what happened, and they typed it up for you; correct?

A Correct.

Q Did you read it before you signed it?

A I don't know how to read it too much in English.

Q Let me show you a statement and I ask you whether this is the statement which you signed on June 15, 1972?

A Yes.

Q Now, you said you were not in the store on the day before the arrest?

A Correct.

Q And didn't you say in this statement on May 24, 1972, "I went to 9019 31st Avenue, Queens, to contact two men I know as Pedro Morell and Ramon Bruzon."

Did you say that?

A He didn't understand when I explained to the agent McElroy.

Q You say that's a misstatement?

A Could be.

Q Did you further say: "When I got to 9019 31st Avenue, I went inside and talked to Pedro Morell.

"He said that he and Bruzon had just received a shipment of cocaine but that I had to talk to Ramon Bruzon about it."

Didn't you say that?

A Not that way.

Q It did not happen that way?

A Maybe he made a mistake when he write it -- the way my English is.

Q It's your testimony now that Ramon Bruzon called you a couple of days before the arrest?

A Yes.

Q On the 23rd he called you; is that right?

A Yes.

Q And he called you; isn't that right?

A Yes.

Q Didn't you say in this statement:

"I waited until approximately 6:30 P.M., at which time I called Ramon Bruzon at his home."

Didn't you say that?

A Maybe he don't understand me that way.

Q He didn't understand that either.

On May 25th when you went into the store,

you testified that Pedro was on the ground flobr; isn't that right?

A Yes.

Q And Ramon wasn't on the ground floor?

A Right.

Q Didn't you say on June 15, 1972;

"When I got inside, I talked with Morell and Bruzon about the cocaine. Morell and Bruzon then took me into the basement of 90-19 31st Avenue and showed me plastic bags with cocaine in them."

Is that true?

A Could be.

Q Well, let's clear it up. Is your testimony that both were on the ground floor?

A No.

Q Your testimony is that only one was on the ground floor?

A Yes.

Q But you gave this statement on June 15, 1972; is that right?

A I explained to you, when he make that statement, he typed it for me, maybe he don't understand me.

Q I see. Let me show you again, Government's

exhibit 1 in evidence, and I ask you whether that picture shows you any powder on the floor of the basement.

A No.

Q Was there powder on the floor of the basement?

A No.

Q None at all?

A I can't remember exactly.

Q After you were taken into custody on May 25, 1972 --

MR. KAPLAN: Objection to that, your Honor.

MR. SANTANGELO: I'll rephrase it.

Q You weren't taken into custody because you were being paid for that case.

MR. KAPLAN: Objection, that's a conclusion.

Q You weren't arrested that day, on May 25, 1972, you weren't arrested on that day?

A No.

Q When the agent came into the store, did they have guns in their hands?

A Yes.

Q How were they dressed? Were they dressed in suits and ties?

A I don't know how they were dressed.

Q Did you see them?

A I see them.

Q How many were there?

A Quite a few.

Q About 10 or 12?

A I don't remember exactly how many.

Q All with guns?

A I believe so.

Q And they rushed in right behind you; is that correct?

A Yes.

Q Now, after Ramon Bruzon and Pedro were arrested, you were taken someplace, weren't you?

A Yes.

Q You were taken down to the Bureau of Narcotics headquarters; isn't that right?

A Yes.

Q And then you were let go to go home?

MR. KAPLAN: I'll object to the characterization he was let go to go home.

Q What did you do after you were taken to the headquarters, did you go home after that?

A Yes.

Q Did there come a time that you got paid for

this case?

A Yes.

Q And you got $1500[illegible]; is that right?

A Yes.

Q Did you go back to the headquarters to get paid?

A No.

Q Did you get paid before or after you made this statement?

A I believe before.

Q Where were you paid?

A Cash.

Q Where?

A Agent McElroy.

Q Where were you paid, in your house?

A I believe so.

Q Do you know when?

A Exact day, no.

Q Could it have been a couple of weeks?

A Could be.

Q A month?

A Between a couple of weeks, a month.

Q Now, in 1972 -- I withdraw that paragraph.

I ask you if you made this statement on

June 15, 1972:

"No threats or promises of reward have been made to me and this statement is freely and voluntarily given."

Did you say that on June 15, 1972?

A Correct.

Q Were you paid for this case?

A I was paid for that.

MR. SANTANGELO: No further questions.

MR. SLOTNICK: I have no questions.

THE COURT: Do you have any more questions?

MR. KAPLAN: Yes.

REDIRECT EXAMINATION

BY MR. KAPLAN:

Q In 1972, Mr. Valdez, you told us that you were employed in anotherposition, other than working for the Bureau of Narcotics and Dangerous Drugs; is that correct?

THE COURT: I think we have been all through that.

MR. SANTANGELO: Objection.

MR. KAPLAN: Can I continue, your Honor?

THE COURT: Proceed.

Q (Mr. Kaplan continuing) Was your wife

employed during that period of time?

A Yes.

Q And can you tell us how much was she earning?

A $100 a week.

Q Was earning $100 a week?

A Correct.

Q Can you tell us if any promises were made to you to get you to give that statement that you gave to Agent McElroy?

A No.

Q When you gave the statement to Agent McElroy, do you remember who was present at the time?

A The other agent.

Q Which other agent?

A I don't remember exactly the name now.

(continued next page.)

Q Do you happen to know if Agent McElroy speaks Spanish?

A No, sir.

Q And were you speaking English to him?

A No, sir.

Q And you told him the story?

A In English.

Q And what did he do while you were telling the story?

A First writing on a piece of paper, then he typed it.

Q Can you tell us how well you read English?

A I say I can't read well English.

Q Tell us what your educational background is in reading English.

A None.

Q None?

A None.

Q Explain to us when you say you gave money to your father in 1972, explain to us what you --

Can you explain to us what he was doing with the money for you?

A He saved it for me.

Q He was holding it for you?

A Yes.

Q Did he give it back to you at a future time?

A Yes.

Q When you were working for the agency, Bureau of Narcotics, can you tell us if there was any danger --

MR. SANTANGELO: Objection.

THE COURT: Sustained.

Q Can you tell us if you had to take time out of your work --

MR. SANTANGELO: Objection, your Honor.

MR. KAPLAN: They opened the door on cross examination.

THE COURT: I'll sustain the question.

Q Can you tell us in your coming here today and coming here last week to testify in this case, any reward or threats or promises had been made to you?

A No, sir.

MR. SANTANGELO: Object to that.

MR. KAPLAN: I have no further questions, your Honor.

THE COURT: All right, step down.

MR. KAPLAN: I'll call Agent Schaflatt to the

stand.

J E F F R E Y S C H A R L A T T , called as a witness, having first been duly sworn by the Clerk of the Court, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Agent Scharlatt, by whom are you employed?

A Drug Enforcement Administration.

Q In what capacity?

A Supervising agent.

Q Tell the members of the jury what it is to be a supervising agent.

A Have a group of agents under his control.

Q Were you employed in May of 1972 by the Bureau of Narcotics?

A Yes, sir.

Q Can you tell us if there came a time when you instituted surveillance at the premises known as 90-19 31st Avenue, Jackson Heights?

A Yes, sir.

Q And approximately when had you instituted surveillance?

A I first arrived in the vicinity of that

location at approximately 5 minutes to 4.

Q By the way, tell the members of the jury what type of surveillance was instituted.

MR. SLOTNICK: May we have the date of that?

MR. KAPLAN: May 25.

THE COURT: Same day.

Q What type of surveillance was instituted?

A Surveillance by agents and special investigators for the Nassau County District Attorney's office. They were on foot and in cars and we had a surveillance truck also.

Q And where with respect to the premises in question was the surveillance instituted?

A All around the store in question. It was on both sides of the street and behind the store.

Q Now, were there a number of entrances or exits concerning this particular premises?

A One in the front, one in the back.

Q And was the surveillance instituted at both locations?

A Yes.

Q How many agents were located at both locations, if you recall?

A Most of the agents were watching the front.

There were only two watching the back.

Q Now, prior to the instituting of surveillance, what, did you do, with respect to Mr. Valdez on May 25, 1972?

A I spoke to him and gave him final instructions how to proceed. I also gave him $48,000 official Government funds.

Q Was anything done with respect to his car or the vehicle he was driving?

A Yes.

Q What was that?

A Valdez and his vehicle was searched for contraband and none was found.

Q And you put a suitcase in the trunk of his car?

A I didn't, one of the agents.

Q And can you tell us how much money it contained?

A $48,000.

Q This was official Government currency?

A Yes, sir.

Q Now, after Mr. Valdez was searched and the money was put in his car, what, if anything did you do with respect to Mr. Valdez?

A I followed him to the location in question.

Q What did you observe?

A I observed him pass in front of the store, get out of his car, walk in the store.

Q What happened?

A After about a half hour, he came out of the store with Mr. Morell. Mr. Valdez walked to the trunk, Mr. Morell came out of the store, stopped.

After he saw Mr. Valdez go to the car, he walked back in the store.

Q Where was the car located with respect to the front door of the premises?

A Right in front.

Q How many feet would you say?

A 10 feet.

Q The car was 10 feet from the store?

A Yes.

Q And where was Mr. Morell located with respect to the trunk and the door?

A He was halfway between the store and the car, looking at Mr. Valdez, who was at the trunk.

Q And what did you observe with respect to Mr. Morell? What was he doing?

A Just standing there watching Mr. Valdez.

Q After Mr. Valdez took the suitcase out of the trunk, what did Mr. Morell do?

A Went back inside the store.

Q What did Mr. Valdez do?

A He walked in the store.

Q What, if anything, happened at that point?

A Agents followed Mr. Valdez into the store and placed Mr. Morell under arrest.

Q Can you tell us about the signal?

A The signal was, when Mr. Valdez took the black attache case out of the trunk and walked slowly towards the store, that was the signal that he had seen the cocaine, and we should come in and arrest the defendants.

Q Now, you say Mr. Morrell was arrested in the upstairs premises; is that correct?

A That's correct.

Q Describe the upstairs to us.

A It was just a vacant store with things scattered around.

Q Describe the condition of the store?

A It didn't look like the kind of store that the public would use. It looked like a storehouse.

Q Was it clean or dirty?

A Dirty.

Q What was the nature of the furniture, if any?

A I think there was one or two folding chairs, but not really any furniture.

Q Now, after you were in the front part of the store, the upstairs premises, what, if anything, did you do after Mr. Morell was arrested?

A I went down to the basement with some other agents.

Q Tell us how you got down to the basement?

A There was a trap door leading to some stairs which went into the basement, and I went down the stairs.

Q Was the trap door open or closed at this time?

A It was open when I saw it.

Q What, if anything, didyou do when you got downstairs or did you see?

A As soon as I got to the bottom of the stairs, I saw Mr. Bruzon running towards the back door.

Q When you say running, could you explain to the jury how fast he was moving?

MR. SANTANGELO: Objection, your Honor. He was running.

THE COURT: Running.

Q Towards where was he running?

A Towards the back door.

Q And, what, if anything did you observe at that point?

A I tried to catch him with some other agents.

Q And what happened?

A Mr. Bruzon got out the back door, followed by Agent Sears. Before I got there I was advised by either Sears or Schneppe, that Mr. Bruzon had been placed under arrest outside in the backyard.

I turned around to go back up the stairs to the first floor, as I turned around, laying right in the middle of the floor, in the middle of the building, was several plastic bags with white powder in a shopping bag.

Q Where?

A To the front, to the right of the stairs.

Q And describe to us the scene as you approached the materials lying on the floor?

A I observed a shopping bag and all around it were plastic bags with white powder, and about three feet above -- strung above -- it was a hammock.

Q I show you what has been marked as Government's exhibit 1 in evidence, and ask you if you can identify

this picture.

A Yes.

Q Please explain that to the members of the jury what is depicted in this particular photograph?

A This is a photograph of the shopping bag and the plastic bag with the white powder as I saw it. I have -- had another agent take the picture before I touched any of the evidence.

Q And what else is depicted there?

A Plastic bags, white powder spilled on the floor, white powder in plastic bags, jar containing substance; a can that's tipped over and a suitcase and a tire.

Q This picture was taken the time of arrest?

A Yes.

Q A little after?

A Yes.

Q Did there come a time when you made a seizure of the substances in question?

A Yes, sir.

Q And when was that?

A Immediately upon the picture being taken, we gathered up the evidence, and I assisted.

Q What did you do with the materials that you

seized?

A I turned it over to another agent and it was transferred over to the Westbury office, put in a safe, and sent over to the United States Chemist's office for analysis.

Q Was that material initialed by you?

A Yes, it was.

MR.KAPLAN: Your Honor, at this time I ask that the stipulation be read.

MR. SANTANGELO: No objection.

MR. SLOTNICK: No objection.

THE COURT: All right, read the stipulation.

MR. KAPLAN: This is a stipulation entered into between counsel for the Government, myself, and the two attorneys for the two defendants.

It is hereby stipulated, consented to by and between the undersigned, that if a chemist of the Drug Enforcement Administration were called to testify, he would testify that the exhibit marked as numbers 2, 3, 4, 5, 6 and 7 are a white powder containing cocaine hydrochloride, a Schedule Two narcotic drug, having a net weight of 3,867 grams, and that exhibit 8 and 9 are boric acid; too, that the aforementioned exhibits have remained exclusively

in the custody and control of the Bureau of Narcotics and Dangerous Drugs, also known as DEA from the time of their receipt, heretofore testified, until their production in this court.

THE COURT: That's a stipulation agreeing what you are looking at now is the cocaine.

Of course, a stipulation doesn't concede that these defendants were in possession, nor do they admit that it was their cocaine. Do you understand that now?

DIRECT EXAMINATION

BY MR. KAPLAN: (continuing)

Q What was the dress of the defendant Bruson at the time of his arrest?

A Sweatshirt and workpants.

Q What was the condition of the downstairs premises, can you explain that to the jury?

A It was not orderly. It was things strewn about. There were cans and paint strewn about the area, just a basement that was just not well taken care of.

Q I'm going to ask you, Agent Scharlatt, if you had previously looked at your initials on these exhibits marked 2 through 9 in evidence, and can you tell us if these are the ones that you seized and turned over

to the chemist?

A Those are the original exhibits and original containers.

MR. KAPLAN: I would indicate to the jurors these two are the cocaine and these two are the boric acid seized.

I have no further questions.

CROSS EXAMINATION

BY MR. SLOTNICK:

Q Agent Scharlatt, you were the chief agent that day, supervisory agent?

A Yes.

Q How many men did you have with you?

A About 10.

Q This was Special Agent McElroy, yourself, William Schnepper, Thomas Sheehan, Stewart Stromfeld, Lawrence McElynn and there were some other detectives?

A Two from Nassau.

Q All walked into the store bearing guns?

A All that I saw.

Q Had you ever surveilled 90-19 31st Avenue before January 1972?

A No.

Q Had you known whether prior to May 25, 1972 --

A I don't think they had, but I don't have first-hand knowledge.

Q You have read all the reports in the case; is that correct?

A Yes.

Q And as a result of that, do you know whether anybody in your command surveilled that store prior to May 25, 1972?

A I don't think they did; no, sir.

Q As a matter of fact, isn't it true the first time you ever saw my client was on May 25, 1972?

A Yes, sir.

Q And as a matter of fact, the first time anybody ever saw my client was on May 25, 1972?

A Well, if you say my command.

Q I'm not talking about what Mr. Valdez told you, I'm talking about your special agents.

A I don't think anyone else saw them, but I'm not sure, maybe McElroy.

Q You read all the reports in this case?

A Yes, I'm trying to remember, there were quite a few reports.

Q I show you a page from a report and ask wheth you can recognize that? May this be marked?

THE COURT: Mark it for identification.

THE CLERK: Document marked for identification as defendant's exhibit E.

(So marked.)

Q By the way, all of the case reports in this case bear your signature; is that correct?

A No, I don't think so.

Q You read all the case reports?

A I don't think I did. I believe that's why Mr. Pyler signed some of them.

Q I show you defendant's exhibit E for identification, and ask that you read what I've underlined and see if that refreshes your recollection, rings a bell.

A Yes, sir.

Q It rings a bell. And did you read that prior to coming to testify to court?

A Yes, sir.

Q And is that one of the reports that you signed?

A I don't know. Could I see the first page?

(continued next page.)

MR. SLOTNICK: That's what I am looking for myself.

MR. KAPLAN: May I see the document?

THECOURT: It doesn't make a difference.

MR. SLOTNICK: Nevertheless, that's one of the reports that you read prior to coming to court.

MR KAPLAN: We'll stipulate to that.

THE WITNESS: Yes, I read it in Mr. Kaplan's office.

CROSS-EXAMINATION

BY MR. SLOTNICK (Cont.):

Q And that was a report of an agent who was on the scene at the time; is that correct?

A Yes.

Q Along with yourself?

A Yes, it's a report of the agent. I was on the scene.

Q And you observed it outside of 90-19 31st Avenue in Jackson Heights; is that correct?

A Yes.

Q On May 25?

A Yes, sir.

Q Now, does that report refresh your recollection where Mr. Valdez parked his car?

A No, just where I thought he parked his car.

Q Where did he park his car?

A In front of the store.

Q Doesn't that report indicate that he parked his car in front of 90-17 31st Avenue?

A Yes, sir.

Q And is that your recollection?

A Yes, sir.

Q And that was the store next door to the store.

A 90-17 is probably next to it.

Q So he parked his car in front of 90-17?

A He parked in front, the angle that I was sitting at it looked like in front.

Q Isn't it a fact when you testified last week you were asked when you observed Mr. Morell walking to the trunk of the Valdez car with Mr. Valdez?

A Yes, sir.

Q And you remember the answer you gave?

A Yes.

Q What was the answer?

A No.

Q He did not?

A Yes.

Q Isn't it a fact that you observed Mr. Morell walk out, stop about ten feet from the trunk of the car,

indicating from the witness stand to this table.

A Yes.

Q And there was some conjecture whether it was ten or twelve feet?

A Right.

Q And you observed him walk right back inside; is that correct?

A Yes.

Q Read that report and see what that report indicates, and see whether it refreshes your recollection whether he even walked out that far from the car or near the car?

A Yes, I see it.

Q Doesn't that indicate that he just walked to the door and just walked right in?

A It says he stopped directly outside the door out that's not my recollection, but I don't think I signed this report.

Q So that's some other agent's recollection?

A Yes.

MR. KAPLAN: Object to what another agent said.

THE COURT: Sustained.

Q Now, is it your recollection as Valdez walked toward the trunk of the vehicle, Morell turned and walked

into the store?

A That's approximately right. He might have waited until Valdez got to the trunk.

Q Then he might not have waited.

A That's right.

Q Does this report help refresh your recollection as to the fact that he might have walked right back into the store?

A I only remember what I remember. The report doesn't help me much.

Q This was a nice day in May?

A Yes.

Q Nobody wore coats?

A I don't remember.

Q Well, May is --

MR. KAPLAN: Objection, your Honor. It's improper.

THE COURT: Nothing to get excited about. So May is a nice day. That's not going to change the case.

Q Now, will you read paragraph 12 again of this report?

A Yes, I read it.

Q Now, I ask you, is it possible, to your recollection, that Mr. Morell walked outside of the door and turned around and walked right back in?

A My recollection is that he came out, he stopped, he watched Mr. Valdez. Then he turned around and went back in.

Q Is it also possible --

MR. KAPLAN: Objection to what's possible.

MR. SLOTNICK: I withdraw that.

Q Does that refresh your recollection as to the fact that perhaps he walked back in before Mr. Valdez even reached the trunk?

A No, my recollection is that Mr. Valdez got to the trunk -- the car was very close to the building, and Mr. Morell stayed outside certainly long enough for Mr. Valdez to reach the car.

Q Was Mr. Morell as close to the trunk of the car as the witness stand is to where I am standing now and then turned around and walked back into the store?

A That's right.

Q Now, by the way, after you arrested Mr. Morell, you went to his apartment, didn't you?

A I didn't arrest Morell but I went to his apartment.

Q And someone arrested Mr. Morell, yourself and

how many agents went to Mr. Morell's apartment?

A I think two others.

Q And two agents went to Mr. Morell's apartment?

A Yes.

Q Did you meet his wife?

A Yes.

MR. KAPLAN: Objection to being irrelevant.

MR. SLOTNICK: It's not irrelevant.

Did you search his apartment?

A Yes.

Q Did you find anything?

A No contraband.

Q Did you find any drug, narcotics, contraband?

A No, sir.

Q As a matter of fact, Special Agent Scharlatt, McElroy, Schnepper --

MR. KAPLAN: I'll object to this. He already testified.

THE COURT: He already went to his apartment.

MR. SLOTNICK: I'm refreshing his recollection.

MR. KAPLAN: There is no evidence that his recollection is impaired.

MR. SLOTNICK: We don't have to mark it.

MR. KAPLAN: I'll object to this whole

proceedings.

MR. SLOTNICK: I'll mark it after I show it to the witness.

Q Does that refresh your recollection who went to the Morell apartment?

MR. KAPLAN: I'll object to this. There is no evidence that his recollection is impaired.

Q How many men went to the Morell apartment?

A Four, including myself.

Q And the four of you searched the apartment?

A No, three; one stayed with Mr. Morell.

Q Three of you searched the apartment, one stayed with Mrs. Morell. She was under constant observation?

A Yes.

Q And the apartment search proved negative?

A Yes, sir.

Q Do you see Mrs. Morell in court today?

A Yes.

Q Point her out, please.

A I believe it's the young lady in the green.

Q That's correct.

THE COURT: Stand up and give your name.

THE WITNESS: Mrs. Morell.

Q Did you go to a house or an apartment?

A To an apartment.

Q Do you remember?

A Yes, it was an apartment.

Q And do you remember the address of the apartment?

A No, I don't.

Q If I told you 18-10 21st Avenue, Astoria, would that refresh your recollection?

A I could look at the report again. If you are reading from the report, that's what it is.

Q By the way, while you were establishing surveillance at 90-19 31st Avenue in Jackson Heights, did you ever see my client walk down the trap door?

A No.

Q Did you ever see my client on the ground floor of that building?

A Street floor or basement?

Q Basement.

A No.

Q And when you were down in the basement and you took photographs, Exhibit 1, Government's Exhibit 1, did you remove something from --

A Yes.

Q What did you remove?

A A hammock hanging above it.

Q Hammock in Government's Exhibit 1?

A Yes.

Q You removed it so you could get a full, complete picture?

A Yes.

Q That hammock was hung over this whatever it is?

A Yes.

Q By the way, did you seize a big bag, big plastic bag?

A I don't recall. I would have to check the list of exhibits. I don't recall.

MR. SLOTNICK: Does Mr. Kaplan have a list of the exhibits?

MR. KAPLAN: I'll object to this being done quite this way. I'll object to the characterization "big bag." What's a big bag?

THE COURT: Only testify to what he saw.

Q Other than what is on this table, what else did you seize?

A I would like to look at the report. It's two years ago and I would like to see them.

MR. SLOTNICK: While we are doing that, will you mark this for identification?

THE CLERK: Document marked for identification as Defendant's Exhibit F.

Q Now, I show you the report. Does that show what you seized?

A This isn't the report that I was looking for. Maybe it's in here somewhere.

Q Will you please? It will take a moment.

A All right, it's quite lengthy. Do you want me to read what I seized?

Q Let me see what it is.

A Exactly how it was packaged and how it was seized?

Q Could you make sort of a synopsis -- in other words, isn't it a matter of fact that you seized what was on the table?

A I know we seized what was on the table.

Q Now, other than what was on the table, what else did you seize?

A I can't make a synopsis of that. I would have to go into detail how each thing was packaged, how each thing was seized.

Q What's on this table, was this the way it was seized?

A No.

Q It wasn't seized this way?

A It wasn't laid out like that.

Q Obviously not. But it was in a bag like this?

A That was the bag.

Q That's one exhibit. That was the bag -- this is Exhibit 2. Other than what is laying on the table, did you seize anything else?

A There was a shopping bag, I believe.

Q Was that a plastic bag or a paper bag?

A Paper bag -- I'll check this, but I'm sure it was a paper bag.

Q Take a look.

A This doesn't indicate it. I would have to look at the other report given to our chemist, but I know there was a brown paper bag.

Q Didn't you read the report before you came to court today?

A I didn't read these -- I didn't read any report.

Q Were you in court last week? Did you read any then?

A You didn't ask that question. I didn't look at the report.

Q Did you or do you recollect seizing a plastic

bag larger than any of these plastic bags?

A No. Well, I see a plastic bag. I don't know if that's what you're referring to.

Q I don't know.

A I seized it. It was there. All this was seized.

Q But you are not sure whether that was there?

A I am sure it was.

Q Do you know if it had cocaine particles in it?

A The chemist can tell.

Q You are an expert in this cocaine proposition; is that correct?

A If you say so. I don't consider myself an expert.

Q I say so, Mr. Kaplan says so.

MR. KAPLAN: Your Honor, expert as to what?

MR. SLOTNICK: Expert as to what I say Agent Scharlatt, who is a supervisory agent for the BNDD is an expert with regard to cocaine, and I am going to ask him certain questions.

THE COURT: I don't know what that means, either.

MR. SLOTNICK: Shall I qualify him?

THE COURT: What do you want to ask him?

MR. KAPLAN: Stipulate that he he an expert as to cocaine traffic.

Q The texture of cocaine, what is it like? Is it like talcum powder?

A Sometimes yes, sometimes no.

Q The cocaine you found in this case,was it like talcum powder?

A It was a white powder. I'm not too familiar with talcum powder.

THE COURT: That was used thirty years ago. It used to be used in the athletic clubs. It did nothing except dry them off instead of a towel.

Q It's a white powder?

A It's a white powder, sometimes it's a crystal. I don't like to use a term white powder. It's a powdery-looking substance.

Q When we took out the bags last week and separated them and put them on the table, it was particles on the table?

A Yes.

Q It gets loose out of the plastic bags?

A It might have been a whole in the bag. I don't know.

Q That's good enough.

Are you aware of the fact that a chemist can take a trace of this powder and examine it and determine whether it was cocaine?

A Yes.

Q And you are also aware that your Bureau has various little machines that are like vacuum cleaners that suck up traces and are delivered to chemists, and they determine whether it's cocaine or not?

A Yes.

(continued next page)

Q Is it your practice as an expert, when you believe that someone has cocaine on their person to use this vacuum cleaner on their clothes?

A Those are two objects.

Q Did you vacuum the house? Did you vacuum my client's hands, fingers, clothes?

A No.

Q Did you take his clothes?

A No.

Q And isn't it true that the smallest trace, a particle not visible to the human eye can be diagnosed by a chemist as being cocaine?

A Now you are asking me to testify --

Q A particle just visible to the human eye --

A I know they can do it with very small particles.

Q How long were you involved in searching my client's apartment?

A I would guess it was about a half hour.

Q All three of you, and the one watching Mrs. Morell?

A That's correct.

CROSS EXAMINATION

BY MR. SANTANGELO:

Q Do you see any white powder on this table?

A I see a lot on this table.

Q Out of the bag?

A I can see some from here; yes.

Q When you saw Mr. Bruzon on the day of his arrest, May 25, 1972, can you tell me what he was wearing?

A Work pants and a sweatshirt.

Q Describe the condition of the sweatshirt.

A Dirty, had white substance on it.

Q Do you recall what that white substance was on his sweatshirt?

A No, I don't.

Q I show you page 4 of the same report you are -- were reading before, and I refer you to paragraph 2, the line portion, and ask you if that refreshes your recollection as to what the substance was on his sweater.

A I don't know if I saw this report before.

Q Take a look at the report and see if you saw it before.

A No, I never saw this report except before in Mr. Kaplan's office a week ago.

Q Take a look at it now and see if it refreshes your recollection as to what that substance was

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on his sweater?

A I don't know. An agent wrote sweatshirt and pants was splattered with paint. I don't know.

Q Now, you were with Ramon Bruson for a matter of time that day?

A Yes.

Q And you were close to him?

A Yes.

Q Few feet, few inches away?

A At times.

Q About how long were you with him?

A Few hours.

Q And you never determined on that day that there were particles of cocaine on his sweatshirt?

A No.

Q You did not determine on that day that there was particles of cocaine on his pants?

A No.

Q Or on his shoes?

A On any part of it, no, sir.

Q Now, you came into the store on the day of that arrest with your gun drawn; is that right?

A Yes.

Q And you then proceeded down the basement;

is that right?

A Yes.

Q You were the first one down the basement stairs?

A No, sir.

Q Did Agent Sears precede you down the basement stairs?

A Yes.

Q Did Agent Sheehan proceed down the basement stairs?

A I don't recall Sheehan being downstairs, but I know it says that in the report.

Q Do you remember Agent Schnepper preceding you down the stairs?

A Yes. He was in front of me.

Q So definitely, there were two people going down the basement stairs before you and possibly three?

A Yes, sir.

Q Do you recall the basement stairs as they proceeded down, proceeded toward the front of the store, or the back of the store?

A Towards the front.

Q Towards the street side?

A Yes.

Q Not towards the back?

A No.

Q And can you tell me how far away from the left-hand wall as you proceeded down were the stairs?

A They could have been right on the wall, but they certainly looked very close.

Q So when you got to the bottom of the stairs, you turned left, you walked into a wall; is that correct?

A I think that's correct.

Q And how far from the bottom of the stairs was it to the wall in front of the stairs?

A I think it was pretty close.

Q About two or three feet?

A I don't recall exactly, but I'm pretty sure it was close.

Q So that if you stood at the bottom of the stairs in the basement, you pretty well filled up the whole area between the stairs and the wall; isn't that correct?

A I'm not really sure. I know it was close.

Q It was close?

A Yes, sir.

Q Now, when you first saw Mr. Bruzon, what part of the basement was he in?

A The rear part.

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Q He was in the rear part?

A Yes, sir.

Q And you saw him going out of the door, didn't you?

A Yes, sir.

Q And you heard someone say, "stop, police,"?

A Yes, sir.

Q And thereafter, he was arrested; isn't that right?

A Yes, sir.

Q Now, the area where you say you saw him was an area, was it not, -- I'll withdraw that.

Was the area in which you saw him a type of alleyway?

A It was a fairly narrow area.

Q Approximately, would you say three and a half to four feet wide?

A I don't know if it's that wide. It may be a little wider. I'm not sure.

Q Let me show you a picture, and I ask you if you can identify that as the area where you first saw Mr. Bruzon?

A No, not really, it could be.

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Q You can't identify that?

A It could be, but I'm not sure. It looks like a basement of the same type.

Q To the best of your recollection, that's not the area, or you can't remember?

A I remember the area, but I don't know if this is a picture of it. It could be a picture of something else.

Q Does it look like the area?

THE COURT: Sustained.

Q But you do remember the area as an alleyway approximately 4 feet wide; is that correct?

A You say an alleyway. It was a narrow area.

Q A corridor?

A That would be better.

Q And in that corridor, there were possibly -- definitely 2, and possibly 3 agents proceeding ahead of you; is that correct?

A At least 2.

Q And past these, definitely 2 or possibly 3 agents, you saw another person ahead of them; is that right?

A Yes, sir.

Q And you saw him open a door?

A I don't remember him opening a door.

Q You saw the door open at one point; is that right?

A Yes.

Q When you saw the door open, you saw Mr. Bruzon?

A Yes, sir.

Q And you heard someone say, "Stop, police"?

A I heard that before that.

Q With your guns drawn?

A Yes, sir; I'm sure they were, mine was, I'm sure.

Q Were you wearing a suit and tie?

A I don't remember.

Q Was anybody wearing a suit and tie?

A If anybody was, it was me.

Q Anybody have a warrant that day?

A No, sir. Arrest --

Q Arrest warrant?

A No.

Q You did not show an arrest warrant to anybody?

A No, sir.

Q Let me ask you one question without the picture. On the ground floor, --

THE COURT:Street floor.

Q The street floor, do you recall a refrigerator being there?

A Only from the pictures we saw last time, but I don't recall from that date.

MR. SANTANGELO: No further questions.

MR. SLOTNICK: One question.

CROSS EXAMINATION

BY MR. SLOTNICK: (continuing)

Q When you searched my client's apartment, did you go there with a search warrant?

A No, sir.

THE COURT: Any other questions?

MR. KAPLAN: There will be a short redirect.

THE COURT: Do it now.

REDIRECT EXAMINATION

BY MR. KAPLAN:

Q What time did you institute surveillance on the 25th?

A I got there about 5 to 4.

Q What time did Mr. Valdez arrive at the front door?

A About 4:40.

Q What time did you make the arrest, if you can recall?

THE COURT: This is not really redirect.

MR. KAPLAN: Can I just ask a few questions?

THE COURT: That's not the point. The point of redirect is to ask some question that has been raised on cross examination, not just to go back over what we did before.

MR. KAPLAN: I'll raise the question.

REDIRECT EXAMINATION

BY MR. KAPLAN: (continuing)

Q Can you tell us in reference to where you are sitting now, how far Mr. Morell was with respect to the trunk of the car?

A About where you were.

Q He was there far from the trunk of the car?

A Yes.

Q Where was he facing when he was standing in front of the car?

MR. SLOTNICK: Objection to the form of the question.

THE COURT: The form is bad.

Q Where was Mr. Morell standing in front of the trunk of the car?

MR. SLOTNICK: Objection.

Q Tell us where he was standing?

A He was standing in front of the store looking at the car of Mr. Valdez.

Q Where was the trunk located in reference to Mr. Morell?

A About 10 feet right in front of him.

Q Now, can you tell us if it is the usual procedure of the agents of the BNDD to vacuum defendants?

MR. SLOTNICK: Objection.

THE COURT: Sustained.

Q Is it usual procedure to take the clothes --

MR. SLOTNICK: Objection.

Q What is your procedure?

A My procedure is to take to the chemist the evidence that's found but only under unusual circumstances do we use the vacuum.

Q Do -- Were you looking for cocaine on Mr. Bruzon's person?

A No, I was not.

Q How many feet was the hammock overhanging the cocaine?

MR. SLOTNICK: Objected to, your Honor, went into on direct.

THE COURT: He can ask the question.

Q How many feet?

MR. SLOTNICK: Objection, your Honor.

THE COURT: How many feet?

THE WITNESS: About 3, 3 and a half feet.

MR. KAPLAN: I have no further questions.

RECROSS EXAMINATION

BY MR. SANTANGELO:

Q Did you not testify last week, Agent, if you had thought there was cocaine on an arrestee's clothes, you would have seized the clothes?

A Yes, sir.

REDIRECT EXAMINATION

BY MR. KAPLAN:

Q Sir, in this case, can you tell us if it was your feeling that these clothes should have been seized based upon the case?

A No, sir, we had all the other evidence we had.

MR. SLOTNICK:Didn't you say last week --

THE COURT: Why can't --

Q (Mr. Slotnick continuing on recross examination) Didn't you testify last week on that witness stand that you didn't believe he had any cocaine on his clothes or you would have seized it?

THE COURT: That's a bad question.

MR. KAPLAN: Objection, that's not the

testimony.

THE COURT: That's right. Sustained.

RECROSS EXAMINATION

BY MR. SANTANGELO:

Q Did you believe he had cocaine on his sweatshirt?

THE COURT: You know how long you could go through this, that doesn't prove anything.

Did you believe he had cocaine on his shirt? Did you consider it?

THE WITNESS: It did not seem important in light of the other evidence.

THE COURT: All right, step down. All right we'll recess. Be back at 2:15.

(Whereupon jurors were excused from the courtroom.)

THE COURT: Is that the Government's case?

MR. KAPLAN: I intend to call one further witness and ask one question.

THE COURT: One further witness and ask one question?

MR. KAPLAN: And then the Government will rest.

THE COURT: I could tell stories about that.

(Luncheon recess taken.)

MR. KAPLAN: The Government will rest.

THE COURT: Well, say it in front of the jury.

MR. SLOTNICK: At this time, your Honor, the defendant moves for a judgment of acquittal on all the evidence, specifically on count 1.

MR. SANTANGELO: I join in that motion.

THE COURT: Denied.

MR. KAPLAN: All the cocaine is in evidence. I just state that for the record.

THE COURT: Well, say it anyway.

MR. KAPLAN: Before the jury, it's a good idea.

With respect to your Honor's charge, perhaps now would be a good time to comment upon the proposed charge.

THE COURT: Let the jury come in.

MR. KAPLAN: I would ask that any subsequent witnesses --

MR. SLOTNICK: We have one problem that we could take care of during the break.

MR. SANTANGELO: I'll put it on the record. I've subpoenaed some records from the New York State Department of Tax and Finance, returnable today. It was so ordered by Judge Mishler on

Monday and served on Monday. Now, there is a representative from the State Tax Department who indicated to me that they began a search of the records yesterday. The records are in Albany. He also indicated that he does not know whether they will be here tomorrow. He does not have them now. He further indicated there may be a problem with regard to the secrecy provision, with regard to the State Tax Department records. The specifications which I subpoenaed are number 1, an application which was made to the State Tax Department on April of 1972, and an -- a certificate of authority to do business at this store address that's involved in this particular case, licensed under one Ramona Ramos. I don't see any reason for the secrecy.

THE COURT: What do you mean by secrecy?

MR. SANTANGELO: I don't see any problem with the State Department of Taxation.

THE COURT: Why would they have anything to do with a certificate of doing business?

MR. SANTANGELO: For a person to operate a business, he must serve with the State Department of Taxation -- he gets a number, then he has to file quarterly tax returns.

THE COURT: But he also files in the County Clerk's office.

MR. SANTANGELO: Not a certificate of doing business.

THE COURT: You're talking about the sales tax part?

MR. SANTANGELO: He also has to display in the place of business, a certificate of authority. And now, we have a document which was displayed, but happens to be a xerox copy, and I don't believe your Honor, at this time, unless we can work it out, that that can be placed in the record as a document, so I therefore subpoenaed the original documents, and files from the State Department of Tax and Finance -- whether or not your Honor will bear with us through tomorrow --

MR. SLOTNICK: It's very urgent for the defense of our case.

MR. KAPLAN: THey had two years to prepare this case at another trial which was supposed to go to the jury a week ago. They knew about this last week.

MR. SANTANGELO: We didn't know about Alfredo Valdez until last week, until last week the bill of particulars had nothing to do with the

case. The answer to the bill of particulars was none, none, none, and none.

MR. KAPLAN: I don't know what he's talking about.

THE COURT: Take a look atthat certificate, see what it is.

MR. KAPLAN: May I see it?

THE COURT: Maybe you can agree on it.

(Whereupon a recess was had.)

(After recess:)

THE COURT: Did you agree? Tell me what is that going to prove.

MR. KAPLAN: That's the question that I proposed.

THE COURT: So they are saying somebody whom they saw or something?

MR. KAPLAN: You are asking me?

THE COURT: Yes, I'm asking you.

If I was in your shoes, put it in if you want to, that's what I would want to do.

MR. KAPLAN: As a matter of law, it seems to me they are offering testimony, they are offering two documents that someone else applied for a fruit store to show that a fruit store was being operated. Let the defendant tstify to it.

THE COURT: The defendants are going to take the witness stand. They can't identify that document.

MR. SLOTNICK: It was in public view on the refrigerator.

MR. SANCHEZ; That was in the store at the time of the arrest.

THE COURT: It's not going to make it a -- you can't bolster testimony because it was in the store. The case is ready two years. I'm not going to go anyplace. You had all the opportunity in the world to find out. You talked to your client. You didn't talk to me. They must have told you who the store belonged to, what kind of fruit stand was there.

MR. SLOTNICK: We didn't know the fact pattern.

THE COURT: Of course you knew the fact pattern. I don't want to get involved in the case. Don't get me involved as a lawyer. I was a lawyer many years before I was a judge. If you want to try the case, try it. If you want to say there is a fruit stand there, say there's a fruit stand there.

MR. SLOTNICK: The problem is again, that this is an official document that could bolster the

defendant's testimony.

THE COURT: You can't bolster defendant's testimony. All you can say is there's a fruit stand there.

MR. SANTANGELO: If we produced the original document, the jury can make a reasonable inference, anyone who makes an application -- certificate of authority -- to operate a fruit store did operate a fruit store, that's an inference.

MR. KAPLAN: That's an inference upon an inference.

THE COURT: Who was operating the fruit store.

MR. SANTANGELO: There will be direct testimony.

THE COURT: Put direct testimony on.

MR. SLOTNICK: We don't have the man. We want to corroborate it.

THE COURT: On a fruit store?

MR. SLOTNICK: Yes.

MR. KAPLAN: It's a collateral matter.

MR. SANTANGELO: It's not collateral.

THE COURT: The only issue, gentlemen, is a very simple issue, whether these two defendants were in the store and the cocaine that was there

was in their possession. That's the issue, what difference does it make if they sold apples or pears?

MR. SANTANGELO: Knowing possession.

THE COURT: You can argue with me from now till Doomsday, one thing I'll charge the jury is whether these people violated this law that we are talking about according to the facts in this case and nothing else.

If you want to talk about a fruit stand with pears, apples, bananas, go ahead. You have 12 intelligent people. You don't have 12 people sitting in the park trying to find out why they are human beings. Do what you want. Once in a while I express my opinion because I know where I'm going, maybe somebody else doesn't know, but I know where I am going. You can't get a fairer trial than that. Put them on, let them testify to that.

MR. SANTANGELO: They will do that.

THE COURT: Why argue with me about it? I'm more than happy for them to get on the witness stand. That piece of paper is not going to change their character on this witness stand one iota. When they take this witness stand, they are subject to every type of examination, just remember that.

MR.SLOTNICK: Absolutely.

THE COURT: It's not going to be a fruit stand. Mr. Slotnick, you have been before me. There is not going to be an examination about a fruit stand.

MR. SLOTNICK: Perhaps, your Honor, I can put it this way: we can prove Mr. Ramos was the lessee of that store and my client was a sub-lessee or sub-tenant of a part of it and these documents help us prove that. My client was not the lessee of the store.

THE COURT: Let's assume that's so. What does that prove? Does it take them out of the store at the time they were found in the store? Does it change in any way, change the testimony whether they were knowingly in possession of cocaine or not?

MR. SANTANGELO: It does.

THE COURT: Whether it was sub-lessee or not,-

MR. SANTANGELO: It will show that they were not the only ones who had possession. They were not the only ones who had access to the store, and you could argue that. The jury could find that there is a reasonable doubt whether there was a knowing or willing possession, that's the issue we are trying to raise.

MR. SLOTNICK: As a side point, after they

were arrested Mr. Ramos took off.

THE COURT: If you went out and found this Mr. Ramos and --

MR. SLOTNICK: He took off.

THE COURT: That's not my fault.

MR. SANTANGELO: It's not the defendant's fault. I can't depend on a confession to clear them.

THE COURT : Every defendant likes a case to linger.

MR. SANTANGELO: Nobody wants it to linger.

MR. SLOTNICK: The documents to be delivered, the tax paper will show that he ran the fruit store and he took off, Mr. Ramos.

THE COURT: Why can't you stipulate to that? Why do you need anything else? What has that got to do with it?

MR. KAPLAN: They are trying to show by a document that a man applied for a fruit store and he was doing business. The testimony shows that there was no fruit stand. It's an inference on an inference.

THE COURT: How about the owner of these premises, is he around someplace? Where did he go? I'm sure he didn't hide someplace? I'm sure he'll tell us who was renting the store.

MR. SLOTNICK: I don't know who the owner was.

THE COURT: Go down to the title company, there's a deed in the County Clerk's office, ask the defendant.

MR. SANTANGELO: Mr. Ramos paid the rent.

THE COURT: I don't know what they tell you. I'm not interested in what they told you. I would say you could find out what was going on in this store. If that's the implication you want to draw before a jury -- and it wasn't three o'clock in the afternoon -- when a case is almost completed, that the tax people can't bring in the form?

MR. SANTANGELO: That's when we found out.

THE COURT: It's not my fault.

MR. SANTANGELO: I'm asking for a continuance.

THE COURT: Not after a two-year lapse. I intend to finish this today.

MR. SLOTNICK: There is a possibility they will have the document tomorrow.

MR. KAPLAN: Your Honor ruled them inadmissible.

THE COURT: That is not the best evidence. As far as I'm concerned, the best evidence is whether

this man was the lessee on the premises.

MR. SLOTNICK: It was on public display.

THE COURT: In my opinion, it's not the best evidence, and you know it's not the best evidence. The best evidence is the owner of the premises. Do you want to bring him in and say Ramos was the --

MR. SLOTNICK: We'll ask that the case be completed tomorrow for us to bring in a witness.

THE COURT: Let's see where we are going today.

Bring the jury in.

(Whereupon jurors entered the courtroom and are now seated in the jurors' box.)

THE COURT: Who is he?

MR. SANTANGELO: He's the representative.

THE COURT: Put your name on the record.

MR. STEIN: Albert I. Stein, Law Bureau, State Tax Commission, 2 World Trade Center.

THE COURT: We are now on the defendant's case. I think the Government has rested and the defendants renew their motions.

MR. SANTANGELO: Yes.

MR. SLOTNICK: Yes.

THE COURT: All right, we are now on the

defendants' case. 468 74

L E O N A R D H E T S O N, called as a witness, having first been duly sworn by the Clerk of the Court, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. SANTANGELO:

Q By whom are you employed?

A By the PUrity Paint Products, Corporation.

Q In what capacity?

A I am an executive with the company. I'm president.

Q How long have you been president of the company?

A Since 1963.

Q Mr. Hetson, do you know Ramon Bruzon?

A Yes.

Q Do you know Pedro Morell?

A Yes.

Q How long have you known them?

A I have known them -- Mr. Morell about since 1968 -- about 6 years.

Q And how long do you know Mr. Bruzon?

A And I've known Mr. Bruzon about 4 years.

Q Under what circumstances did you meet them

or get to know them?

A I met both these gentlemen when they were working as painters for contractors and became friendly with them in the course of their duties. They were spray applicators.

Q Do you know people in the construction trade who have used Mr. Bruzon and Mr. Morell as painters?

A I know many of them. Many people that have employed them and had contractual relationships with them.

(continued next page.)

Q And have you spoken with these people in connection with Bruzon and Morell?

A Many times in the past years.

Q Can you tell me, Mr. Hetson, whether you have heard from these people anything concerning Mr. Bruzon's reputation for truth, honesty and veracity?

A The people that I have had dealings with and have known Mr. Bruzon, have known him morally honest and reliable and forthright as an individual.

Q Can you tell me whether you have heard from these people concerning the reputation for truth, honesty and veracity, to Mr. Morell?

A The same thing holds true there. They are hard-working people.

Q Did there come a time that you learned that Mr. Bruzon and Mr. Morell had been arrested?

A Yes, I did, about the end of 1972 -- about October or November, somewhere in there.

Q You learned of the arrest?

A Yes.

Q After you learned of the arrest, did you hear anything different concerning the reputation of these two men for truth, honesty and veracity?

A As far as I know, as far as I heard, there

was absolutely no change whatsoever. They continued along the same manner as they had previously.

Q Now, last week you spoke to me; is that correct?

A Yes.

Q And you learned at that time the facts of this case; is that right?

MR. KAPLAN: Objection, he's a character witness.

THE COURT: He's a character witness.

Q After you spoke to me last week --

MR. KAPLAN: Objection to conversations he had with counsel.

MR. SANTANGELO: I'm not asking for the conversation.

THE COURT: He's only here to testify as to the character of these defendants, that's all, whether he spoke to you or not is immaterial.

MR. SANTANGELO: I have no further questions.

MR. SLOTNICK: I have no questions.

CROSS EXAMINATION

BY MR. KAPLAN:

Q Would it be fair, from your own personal knowledge, you don't know what happened on May 25, 1972?

A At this particular moment?

Q Were you there on May 25, 1972?

A No.

Q From your own personal knowledge, observation, you don't know what happened?

A If I was there at the moment? No, I was not.

CROSS EXAMINATION

BY MR. SLOTNICK:

Q Do you know what the defendants were indicted for?

A Yes.

Q As far as that, has that changed their reputation?

A It hasn't changed it. My feeling --

MR. KAPLAN: Objection, he answered the question.

THE COURT: We don't go by feelings.

THE WITNESS: As far as their reputation, it hasn't altered one iota.

THE COURT: Step down.

(Witness excused.)

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F R A N K G A R M E N D I A, called as a witness, having first been duly sworn by the Clerk of the Court, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. SLOTNICK:

Q Mr. Garmendia, who are you employed by?

A By the Department of the Army.

Q And what is your rank in the Department of the Army?

A Second Lieutenant in the Army Reserves.

Q Do you know the defendant Pedro Morell?

A Yes.

Q How long do you know him?

A I've known him since the summer of 1966.

Q And do you also know Ramon Bruzon?

A Since 1967.

Q Under what circumstances did you meet Mr. Morell?

A Through a baseball game that we had made up in the neighborhood.

Q And do you know people in the community that know Mr. Morell?

A Yes, I do.

Q Under what circumstances did you meet

Mr. Bruzon.

A Through my association with Mr. Morell on the baseball team, he would come out and watch the game on Sundays.

Q With his family?

A Yes.

Q Do you know other people who know Mr. Bruzon?

A I do.

Q Have you ever had occasion to discuss Mr. MOrell's reputation for truth, honesty, veracity, integrity?

A Yes, sir.

Q Tell us what his reputation is for truth, honesty, veracity and integrity?

A Very good.

Q How about Mr. Bruzon?

A Yes.

Q What is it?

A It's also very good.

Q And these discussions took place with people that know Mr. Morell and Mr. Bruzon?

A Yes, sir.

Q Did there come a time when you were informed that Mr. Morell and Mr. Bruzon had been arrested?

A Yes, sir.

Q Did you then, thereafter, have occasion to discuss what happened to them?

A Yes, sir.

Q Had their reputation changed as a result of that arrest?

A No, sir.

MR. SLOTNICK: No further questions.

MR. SANTANGELO: No questions.

CROSS EXAMINATION

BY MR. KAPLAN:

Q You are a friend of the defendants?

A I played baseball with Mr. Morell for 6 years.

Q You are a friend of theirs?

A Yes, sir.

MR. KAPLAN: No further questions.

THE COURT: Next witness.

J O S E P H L I M A , called as a witness, having been first duly sworn by the Clerk of the Court, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. SLOTNICK:

Q State your name for the record, please?

A Joseph Lima.

Q What is your occupation?

A I'm an accountant.

Q And are you presently about to take the examination for a CPA?

A Yes, sir.

Q Do you know Pete Morell?

A Yes, I do.

Q Do you know Ramon Bruzon?

A Yes, sir.

Q How long do you know Mr. Morell?

A Since 1966, 8 years.

Q And Mr. Bruzon?

A About a year later.

Q Could you tell us the facts and circumstances surrounding your meeting Mr. Morell?

A We used to work together as a painter.

Q You were originally a painter?

A Yes, I was a painter.

Q You worked together with Mr. Morell?

A Yes, about 3, 4 years together.

Q Did you work with Mr. Bruzon?

A No, I didn't work with him.

Q But you met him through Mr. Morell?

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A Yes.

Q During the time that you were a painter, did you have occasion to discuss Morell's reputation for truth, honesty, veracity, among the other people on the job?

A Yes, sir.

Q Would you tell the jury what his reputation was?

A Very good.

Q Now, you know people in the community that know him?

A Yes.

Q Would you tell us what his reputation for truthfulness, honesty, veracity and integrity is?

A Very good.

Q And what about Mr. Bruzon?

A The same thing, very good.

Q Did there come a time when you were told, you found out that these gentlemen were arrested?

A Yes, sir.

Q Do you know what they were arrested for?

A Yes.

Q And did you discuss the case with other people?

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A Yes, I did.

Q And did their reputation for truthfulness, honesty, veracity, integrity come up?

A Yes, and there was no change.

Q And you had discussion with people in the community in the neighborhood?

A Yes.

Q People in business?

A Yes.

MR. SANTANGELO: No questions.

MR. KAPLAN: I have no questions.

THE COURT: Step down.

MR. SLOTNICK: I'll call Mr. Pedro Morell.

P E D R O M O R E L L , one of the defendants herein, was called as a witness, having been duly sworn by the Clerk of the Court, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. SLOTNICK:

Q Mr. Morell, you are known as Pedro or Pete?

A Yes; some know me by Pete, and some by Pedro.

Q As you sit on the witness stand, you are

wearing tinted glasses. Explain to the jury -- 479

MR. KAPLAN: objection.

THE COURT: I'll allow it.

A Due to my job as a spray painter, I had some infection to my eyes, I went to a doctor and he prescribed these glasses to protect me from the light that was bothering me.

Q During May of 1972, will you tell the jury where you lived?

A I live at 18-10 21st Avenue, Astoria.

Q Is that a house or an apartment?

A Apartment.

Q With whom do you live?

A With my wife and my kids.

Q And how many children do you have?

A Two.

Q And how old are they?

A 8 and 7, two girls.

Q How long have you been married?

A 8 years.

Q Is your wife in court now?

A Yes.

Q She was identified before?

A Yes.

Q That was your wife?

A Yes, sir.

Q Now, during May of 1972, how much rent did you pay with regard to your apartment?

A $153.50.

Q And during May of 1972, did you drive an automobile?

A Yes, I did.

Q Tell the jury what kind of car you dgove and what year it was?

A It was a 1967 Buick.

Q Did you buy it new?

A No, used.

Q Mr. Morell, have you ever been arrested before May of 1972?

A No, I have not.

Q Have you ever been arrested since May of 1972 -- after May 25, 1972?

A No.

Q Where were you born?

A I was born in Cuba.

Q Mr. Morell, when did you come to New York?

A I came to New York in 1965.

Q Will you tell the jury what you've done since

you have been in New York with regard to occupation?

A In 1965 I worked at Fallon Furniture in Wantaugh, Long Island for one year, and after that, I started working for Vitco Services, it's a painting company. I worked for them for about 3 or 4 years.

After that I worked for Inter-City Painting until 1971 and then in 1972, I started a partnership of my own with Mr. Bruzon.

Q What kind of partnership was that?

A Painting, house-painting and spray-painting.

Q You still live with your wife and two daughters?

A Yes.

Q How old are you?

A 28.

Q Mr. Morell, have you ever been involved with cocaine?

A No, I have not.

Q Have you used cocaine ?

A No, I have not.

Q You were arrested on May 25, 1972; is that correct?

A Yes.

Q About 5 o'clock in the afternoon?

A Yes.

Q Will you trace your whereabouts for about a few days before the arrest, start with May 21.

MR. KAPLAN: I'll object to any documents --

THE COURT: What is that?

MR. SLOTNICK: That's a document that will refresh his recollection.

MR. KAPLAN: He hasn't said his recollection is impaired. It hasn't been marked.

THE COURT: He has not said that he needs anything to refresh his recollection.

Q Starting with May 21, 1972 --

THE CLERK: Document marked for identification as defendant's exhibit G.

(So marked.)

Q Would you indicate to the jury what you were doing on that day and go up to the day of the arrest. Trace your steps as best you can.

A I think it was May 20th, from May 20th to May 23rd, we were working in East Hampton, Long Island, doing a textured job for John Boswell.

Q You said you were working in East Hampton at the time. Were you commuting from your home to East Hampton?

A We stayed at a motel.

Q Is there any document that you have that refreshed your recollection as to those dates?

MR. KAPLAN: That's improper, your Honor.

Q How do you remember that day?

A I have the bill that I billed Alexander Baine, who was the architect for the house and I have the bill right there.

Q Now, I show you what's been marked as defendant's exhibit G for identification, and ask you whether that's the bill.

A That's the bill. I mailed it to Mr. Baine.

Q What does that bill indicate to you?

A I finished the job by the 23rd, so I sent the bill.

Q How many days did the job take?

A Two days.

Q You stayed in East Hampton?

A Yes, we stayed there for two days.

MR. SLOTNICK: I ask that this be marked in evidence.

MR. KAPLAN: Objection, your Honor. Improper foundation.

THE COURT: I'll allow it in evidence.

THE CLERK: Exhibit G, previously marked for identification, now marked in evidence.

Q Now, when did you come back to your home?

A After we finished the job in East Hampton, the 23rd.

Q May 23rd?

A Yes.

Q Do you remember whether you came back in the morning, afternoon, evening of the 23rd?

A It was the afternoon.

Q What did you do on the 23rd from East Hampton?

A We get back to the store where we kept our equipment. We left everything in the store and then we went home.

Q You went home?

A Yes.

Q And that is the 23rd. Did you go to work on the 24th?

A Yes, I did.

Q Tell us where you went on the 24th?

A I went to work at Dr. Sanchez.

Q Where did you go in the morning?

A We went back to the store to pick up the tools that we needed to work at the doctor's house on the 24th.

Q And did you pick up clothes?

A Yes.

Q And paint?

A Brushes.

Q And where did you go on the 24th?

A I went to Dr. Sanchez' home.

Q What address did Dr. Sanchez live at?

A I don't have his exact address, it's near Union Turnpike in Queens.

Q Do you remember his first name?

A Verlesio.

Q What kind of doctor was he?

MR. KAPLAN: Objection, irrelevant.

THE COURT: He's painting his house, he's not going for treatment.

MR. SLOTNICK: If he knows what kind of doctor he is --

THE COURT: What difference does it make?

Q You went to Dr. Sanchez' house, and that's on the 24th?

A Yes.

Q How long did you work there on the 24th?

A We worked since 8 o'clock in the morning until about 3:30 in the afternoon.

Q Then what did you do?

A Went back to the store, cleaned up our tools.

Q When you say tools --

A Brushes, dropclothes, baguettes full of dust, shake it off, won't get the place dirty.

Q We are on the 24th.

You left Dr. Sanchez' at 3:30, you went back to your store?

A Yes.

Q What is the address of the store?

A 90-19 31st Avenue.

Q What did you do there?

A I went back to the store, put everything away, took off my clothes and went home.

Q Then what did you do?

A Later on, about 9, 8 o'clock, I went over to my brother-in-law's house.

Q You went to your brother-in-law's house?

A Yes.

Q Who did you go with?

A May 24th was my wife's birthday, we went

over to my brother-in-law's house for kind of a celebration.

Q And you stayed there until what time?

A I can't remember exactly. I had to work the next day, but I think it was 1:30, 2 o'clock in the morning.

Q Then what did you do?

A I went to sleep.

Q You went home?

A Went home, went to sleep.

Q May 24th is your wife's birthday?

A Yes.

Q What time did you get up in the morning on May 25th?

A About 7 o'clock.

Q And what did you do on May 25?

A Went back to Dr. Sanchez' home where we were working the day before.

Q And you painted there?

A Yes.

Q Until about what time?

A Until about the same time, 3:30.

Q Then what did you do?

A I went back to the store.

Q Now, with regard to the store, this is May 25th, about what time did you go back to the store?

A I would say about 4 o'clock we got there.

Q Now, with regard to the store, did you or Mr. Bruzon or your business have a lease for 90-19 31st Avenue, East Elmhurst?

A No, we did not.

Q Tell us what the exact set-up was, who had a lease and what was your position in it?

A There is a man by the name of Abano Ramos, he used to be around my neighborhood because his mother-in-law lives nearby. He used to come around, we used to be in the street playing ball.

He was a Cuban, kind of got to know each other, and we finally found out that he had a store that was too big for his business and we could occupy it as half and half, or part of the store for our equipment.

Q What kind of a business was he in?

A He started as a fruit and vegetable store on the premises.

Q Would you tell us what arrangement you had with Mr. Ramos?

A Yes, we were going to pay $50 for part of the store, as part of the rent that he had to pay.

Q And what was the store? Describe the store?

A It's like 150 feet long by 25 feet wide. It has a ground floor and a basement store.

Q Does it have a big refrigerator there?

A Yes, big freezer.

Q Was Mr. Ramos there during the course of the day?

A He'd open up in themorning and close in the afternoon.

Q What did Mr. Ramos do?

A He used to attend his fruit and vegetable store.

Q Was there anyone else who had rented a portion of that store?

A Yes, there was an apartment in the back of the front of the store.

(continued next page.)

Q When you say there was an apartment in the back of the store

A Yes, the store was, like, divided in half and it was a door leading to an apartment in the back.

Q Where was this apartment?

A Street level. Street level.

Q And who lived in that apartment?

A Mr. Ramos had rented it to two girls.

Q That lived in that apartment?

A That lived in that apartment.

Q Now, to your knowledge, who had keys to that store?

A Mr. Ramos, the two girls that lived in the apartment, Mr. Bruzon and myself.

Q Were there many entrances and exits to that store?

MR. KAPLAN: I'll object to the leading at this time.

THE COURT: How many exits?

MR. SLOTNICK: I'll withdraw the question.

Describe the doors leading into the store.

A Well, there is one door in the front, street level; there are two doors in back, one door leads to the basement, one leads to the apartment and there is a

door on the side in the basement that leads to the next door.

Q There is a door on the side that leads to the next door. Did you have a key to that?

A No, we didn't have access to the other store.

Q Did the other store have access?

A Yes, because the meters was on our side and he had access to come and check the meter on our side.

Q That was the door in the basement?

A Yes.

MR. SLOTNICK: I ask that this be marked.

THE CLERK: Document marked for identification as defendant's exhibit H.

(So marked.)

Q Now, you observed Mr. Ramos with the fruit stand; is that correct?

A Yes.

Q Did Mr. Ramos have any employees?

A Not when he had the fruit and vegetable store. I think he had the store for 20, 25 days, he didn't have too much business. Then he started making coconut candies, then he had an employee.

Q Explain to us what that was about.

A Actually it's known in our country, it's made out of coconut grains and sugar and honey. I don't know what else he put in it, and they are something like that, about 2 inches long, the candy.

Q And he had employees that were making that candy?

A He had one employee at the time. I saw him.

Q Making that candy?

A Yes.

Q Did you see Mr. Ramos in and out of the store on many occasions?

A Yes, I spoke to him many, many times.

Q You never questioned him when he was in the store?

A Questioned him?

Q Yes.

A About the business?

Q Why he was in the store?

A No.

MR. KAPLAN: Objection as to conversation he had with Mr. Ramos being irrelevant, hearsay.

MR. SLOTNICK: All right, I'll withdraw it.

MR. KAPLAN: I object and ask for a side bar.

THE COURT: He hasn't done anything with it

yet. You want a side bar? On what?

Q I show you defendant's exhibit H for identification and ask whether you either wrote or filled out or signed this paper.

MR. KAPLAN: I'll object to any questions pertaining to this.

THE COURT: You may ask him whether he did anything on that paper.

A I did not.

Q Will you tell us whether you filed this paper?

MR. KAPLAN: Objection, your Honor.

THE COURT: I'll sustain it, it's not his paper. I'll sustain it.

Q Was this paper in the store?

MR. KAPLAN: Objection.

THE COURT: Sustained.

MR. KAPLAN: Will your Honor sustain the questioning as to the entire line of questions with regard to this paper?

THE COURT: Absolutely.

MR. SLOTNICK: Most respectfully except.

Move it in evidence.

MR. KAPLAN: Objection.

THE COURT: Sustained, no foundation for it.

Q Do you know if Mr. Ramos had a sales tax certificate?

MR. KAPLAN: Objection, your Honor.

Q For that business at that address?

A Yes.

THE COURT: He may answer.

A Yes, I do.

Q Was it in his name?

A Yes, it was.

Q And did there come mail to the store?

A Yes.

Q And who was the mail addressed to?

A It was addressed to Mr. Ramos at 90-19 31st Avenue.

Q There was a man by the name of Alfred Valdez who testified in court. Did you ever see him before?

A Yes, I did.

Q Tell us to the best of your recollection how you met Mr. Valdez.

A To the best of my recollection, he was at the store, he used to visit the store on a few occasions, and I thought, like, he was a friend of Mr. Ramos.

MR. KAPLAN: Objection to what he thought.

THE COURT: Strike it out, what he thought.

Q Did you ever see him with Mr. Ramos?

A Yes.

Q Did you ever see him in conversation with Ramos?

A Yes.

Q By the way, since May 25, the day you were arrested, did you go back to the store?

A Yes, we did.

Q Did you see Mr. Ramos?

A No.

Q Have you ever seen him?

A Not after that day.

Q After your arrest, when you went back to the store, did you notice anything about Mr. Ramos' business?

A It looked like it was closed down.

Q Was it closed down?

A It was closed down.

Q Did Mr. Valdez ever come down to the basement?

MR. KAPLAN: Objection to the leading.

THE COURT: Yes.

Q What areas of the store do you recollect seeing Mr. Valdez?

A He used to look to be familiar with the whole

store.

MR. KAPLAN: Objection to what he looked to be.

THE COURT: Go ahead, that's his answer.

A (continuing) I saw him in the store, in the basement.

Q What can you tell us about Mr. Ramos?

MR. KAPLAN: Objection.

THE COURT: Sustained.

MR. SLOTNICK: I withdraw that question.

When was the last time you saw Mr. Ramos?

MR. KAPLAN: Objection, your Honor, being irrelevant.

MR. SLOTNICK: It's not irrelevant.

THE COURT: Let him answer.

Q When is the last time you saw Mr. Ramos?

A I believe it was the day before or two days before my arrest.

Q And you have not seen him since?

A I have not.

Q Did you ever give Mr. Valdez one of your cards?

A No, I did not.

Q Do you know whether in April or May you had a business card?

A Yes, I did.

MR. SLOTNICK: I ask that this be marked for identification.

On your business card --

THE CLERK: Document marked for identification as defendant's exhibit I.

(So marked.)

Q On your business card , did you have the address of the store?

A No. It was never on the business card.

Q Now, you heard Mr. Valdez say you gave him a business card with the address of the store on it?

A Yes, I heard him say that.

Q Is that true?

A That's not true.

Q I show you defendant's exhibit I for identification, and ask you whether that is a fair representation of the business card that you maintained during April, May and June of 1972?

A Yes, it is.

MR. SLOTNICK: I ask that be marked in evidence.

MR. SANTANGELO: No objection, your Honor.

MR. SLOTNICK: May I explain something to the Court at the side bar?

THE COURT: Tell them.

MR. KAPLAN: May we approach the side bar?

THE COURT: Oh, dear.

(Whereupon side bar conference was had.)

MR. SLOTNICK: This was a card given to me by the defendant a long time ago. I had written on the bottom of the first side of the card. I make the representation there was no printing there, just my writing, and I crossed it out, and I think the jury should know that.

THE COURT: What's that?

MR. SLOTNICK: That's not the address. That's where I had written in and there was no printing on that card in that space at all. I think the jury should know that I don't want them to be misled.

THE COURT: What is that pencil number?

MR. SLOTNICK: I think it is new phone number.

THE COURT: What are these two phone numbers?

MR. KAPLAN: I would like an opportunity to

investigate this. They just handed me this document.

THE COURT: Your man said he received a business card.

MR. KAPLAN: This card could have been made subsequent --

MR. SLOTNICK: I had written in something.

THE COURT: I'm not going to take --

MR. SLOTNICK: I move it in evidence.

THE COURT: You don't explain anything to the jury. Everything is in evidence. Mark it in evidence.

(Whereupon side bar conference was concluded.)

THE CLERK: Defendant's exhibit I, previously marked for identification, now marked in evidence as indicated by the Court.

Q (Mr. Slotnick continuing) There is a black mark on this card. Was there any printing on this card?

A I don't believe so. I'm sure it wasn't.

Q Did you ever transact cocaine business with Alfredo Valdez?

A No, I did not.

Q Did you ever hear the name Chino?

A Yes.

Q Who was Chino?

A Abano Ramos' nickname.

Q After you were arrested on May 25, 1972, did you have a discussion with an agent of the Bureau of Narcotics and Dangerous drugs or a man that describes himself as such?

MR. KAPLAN: Objection to any conversation.

THE COURT: With an agent?

MR. KAPLAN: It's hearsay.

THE COURT: Did you talk to an agent?

THE WITNESS: Yes.

THE COURT: Did you have a conversation with him?

THE WITNESS: After I was arrested?

THE COURT: Yes.

THE WITNESS: Yes.

Q Will you describe him?

THE COURT: Do you know who he was?

THE WITNESS: I don't know his name. He's tall, kind of heavyset. He had curly hair and a mustache.

Q What did he say to you?

MR. KAPLAN: I object to what an agent said to him.

THE COURT: This is at the time of your arrest?

THE WITNESS: Yes.

THE COURT: He may tell us.

MR. KAPLAN: May we approach the side bar?

THE COURT: He may tell us.

THE WITNESS: It happened at headquarters, at Church Street, and he told me, "Pete, this is a very heavy rap, and you could be walking like a free man if you tell us who that stuff belongs to, who the big guy is, what the connection is."

Q What did you tell him?

A I told him I didn't know anything about it, I couldn't help him.

Q Do you know who specifically placed you under arrest?

A It was so many agents, I can't recall who it was.

Q Were you in the store when people walked in with guns drawn?

A Yes, I was.

Q How many people walked in with guns drawn?

A It must have been about 8 or 10.

Q Did you know who they were when they walked

in?

A No, I didn't have an idea. They were all dressed in dungarees and hippy type. I was very frightened, hold-up of some kind.

Q What happened when they walked in with their guns drawn?

A One of the agents said, "Why don't you run away, we'll shoot you and save the Government some money." And I saw two police officers dressed like police officers, also walk into the store after the agents, and I felt relieved. I felt I was protected.

MR. KAPLAN: I object to all these conclusory remarks.

THE COURT: Strike it out.

Q What happened between you and the agents?

A I was punched in the stomach and I was pushed against the wall and searched, and I was later handcuffed.

Q Were you ever shown a warrant of any sort?

A No, I was not.

Q Do you know that your home was searched?

MR. KAPLAN: Objected to.

A Yes. My wife told me about it.

Q Were you there when it happened?

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A I was under custody.

Q Was Mr. Valdez on the premises on the 25th of 1972?

A Yes.

Q Do you remember seeing him and what he did?

A Well, I was in the store at the time and he knocked at the door, and I opened the door, and he said "Is Chino around" and I said no, he's not.

He said anybody else in the store?

I said, "Yes, Ramos is downstairs."

We talked for a little while and he went downstairs.

Q Did you go downstairs with him?

A No, I was working with a compressor that I needed for the next day to spray some kitchen cabinets at the doctor's house, and I was working on that.

Q And that was upstairs?

A Yes.

Q Now, Mr. Morell, you have heard that that store was surveilled by at least 10 agents; is that correct?

A Yes.

Q Did that store have glass windows?

MR. KAPLAN: Objection, your Honor.

THE COURT: To what?

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MR. KAPLAN: To the leading.

Q What kind of windows did the store have?

A Glass.

Q Was the glass, see-through kind of glass?

A It was see-through kind of glass, but at the time it was covered with paper from the inside.

Q Was there any holes on the paper?

A Yes, it was part through and part not.

Q Knowing that there were 10 agents, do you say that you didn't walk down with Valdez that day?

MR. KAPLAN: Objection as to form.

THE COURT: He already swore to tell the truth.

Q Will you tell the jury whether you walked down with Valdez that day?

A I did not.

Q And did Valdez -- Did there come a time when Valdez came up from the basement?

A Yes. He was out there for 15, 20 minutes, and then I saw him, back up, so he said, "I'll see you." I opened the door for him, I walked outside myself. I think I stretched my arm and then I walked back into the store.

Q Then what happened?

A As I was walking back into the store, all of a sudden the door was pushed in. I saw Alfredo walking in with a briefcase, and right after him there was the agents walking in, and then they dragged the suitcase from his hands and I was pushed into a wall with a gun at my head.

Q Now, did you know on May 25, 1972, at any time before you were arrested, that there was cocaine in the basement of that store?

A I did not.

MR. SLOTNICK: Your witness.

MR. SANTANGELO: No questions.

CROSS EXAMINATION

BY MR. KAPLAN:

Q When did you first meet the defendant, Mr. Bruzon?

A He's my cousin. We were raised in Cuba, went to the same church in Cuba and we came on the same boat.

Q He is your cousin?

A Yes.

Q When did you start to become involved in the paint business together?

A In 1972, April, 1972, I believe.

Q That was the first time you started painting, in 1972?

A As a partner.

Q Were you with someone else prior to that time?

A Yes.

Q Who was that?

A In 1965 I was in a painting business -- in 1966.

Q Prior to 1972, with whom were you with?

A In 1966 I worked for --

Q Let's talk about 1971.

A I worked for Inter-City Painting Company.

Q What part of 1972 did you become involved with Mr. Bruzon?

MR. SLOTNICK: I don't know what involved means.

Q Involved in the painting business.

A I think we got the certificate in April.

Q Did you paint houses with him prior to 1972?

A No, I did not.

Q Just in April, started up in April of 1972?

A Yes.

Q And it was you and Ramon Bruzon?

A Yes.

Q In 1972?

A Yes.

Q How often would you paint a house that -- like you told us you painted a house?

A We used to work every day.

Q In April of 1972 you were working every day; is that correct?

A Yes.

Q And in May of 1972, you were working every day?

A Yes.

Q How many jobs would that involve?

A Some jobs took 3 days, some a day, some took a week.

Q How many jobs would you say you had in April and May of 1972 with Bruzon?

A What is the exact time, from where to where?

Q April to May 25, 1972.

MR. SLOTNICK: April 1st?

Q April 1st.

A April 1st to May?

Q Yes.

A I think it would be 3 jobs in that month.

Q You only did 3 jobs from April 1st to May 25,

1972?

A One month.

Q April 1st to May 25 is almost two months; is it not, Mr. Morell?

A I don't remember exactly how many jobs we done.

Q Give us an estimate.

MR. SLOTNICK: I object. Is he asking him to guess?

A I can't answer you to tell you the truth.

(continued next page.)

Q But you say three jobs?

A I said approximately 3, 4. It might have been 4, it might have been 5.

Q One of these jobs was the East Hampton job?

A Yes.

Q And one of the jobs was the Dr. Sanchez job?

A Yes.

Q And what was the third job?

A I really can't remember.

Q But you remember the East Hampton job and you remember the Sanchez job?

A Yes.

Q No other jobs?

A If you give me some time, I might remember. I can't have all the records in my head.

Q Is it your testimony that in those two months you just remember the two jobs from April 1st to May 25th?

A I remember I did another job.

Q Give us the other job?

A I forget the name of the town. It's now Tappanzee Bridge.

Q Well --

MR. SLOTNICK: Let him finish his answer.

A I can't remember exactly when I finished the

job.

Q But you can remember the May 23rd to the May 25th job; is that correct?

A Oh yes, of course.

Q And from April 1st to May 25 you only did 3 jobs?

A I didn't say that.

Q You said you did three jobs.

A I said I didn't remember exactly.

MR.SLOTNICK: I object to that. I think there was a misunderstanding by the witness. I don't feel it's fair to pursue it that way.

THE COURT: It's not going to set the house on fire.

MR. KAPLAN: Your Honor, we'll get to that. They have cross examined.

Q When did you start working with the store? When did you start putting your materials in the store?

A I think it was the beginning of April.

Q Beginning of April?

A Yes.

Q And when did Mr. Bruzon put his materials in the store?

A The same time.

Q Beginning of April?

A Yes.

Q When you started working --

A Yes.

Q Where do you keep your paint in the store?

A The machines which are heavy we kept it sometimes on the side of the level floor and the paint cans we kept down in the basement.

Q Is it not a fact that there were numerous paint cans all over the basement?

A That's true.

Q And the basement, other than the paint cans and some of the boxes that were down there, there was nothing other than these objects?

A Yes, paint cans, boxes, ladder.

Q All your materials for your job?

A Yes.

Q And in the front part of the store as you would walk in, the upstairs premises, other than a freezer, would it be fair to say that there was nothing up there either?

A There was something else up there. That's not fair.

Q What else was up there?

A After Mr. Ramos shut down his fruit and vegetable store, he had stands. We used the stands, we kept the extension ladder, we kept the drop cloths, we kept paper.

Q When did Mr. Ramos shut down his fruit and vegetable store?

A I think it was around a couple of weeks before the arrest, I don't remember.

Q So May 25th and a week or two before then there was no vegetables or fruits being sold at the store?

A Not at that time. There was coconut candy making.

Q And you and Ramon Bruzon would go to the store every day and take care of your business every day?

A And also Ramos was doing coconut candy.,

Q And your co-defendant, Mr. Bruzon, would go to the store every day and take care of your business?

A Yes.

Q And he would go there at night?

A The afternoon.

Q How long would you stay there?

A Four o'clock.

Q 4 to 6?

A Sometimes maybe a half hour, sometimes less.

Q And you would go in the upstairs premises and the downstairs premises?

A Yes, sir.

Q Now, you said on May 23rd you were in South Hampton -- East Hampton?

A From May 20th to May 22nd.

Q You were in the Hamptons?

A Yes.

Q But from May 23rd to May 25th you were in Queens, were you not?

A Yes.

Q And in fact, on May 23rd and May 24th and May 25th, you were in that store, weren't you?

A Yes.

Q At the usual hours?

A At the usual hours.

Q Let's talk about the evening of May 24th. Do you remember that evening you told us about on direct, the evening of May 24th, what did you do?

A I was working at Dr. Sanchez' house.

Q What did you do that evening you say you went out, you went to your mother-in-law's?

A Yes, after I came home from work.

Q You went to your mother-in-law's house.

A Yes.

Q Who was present at your mother-in-law's house?

A Mother-in-law, my brother-in-law, his wife, my other brother-in-law and a couple of other people I can't remember right now.

Q What time did you stay?

A Approximately 1:30, 2 o'clock, I don't remember the exact time.

Q You got there at 8 o'clock?

A I would say 8:30, 9 o'clock.

Q What were you doing at your mother-in-law's house from 8 until 2 o'clock in the morning?

A We were socially talking. We had dinner after a while . We started just talking.

Q It is your testimony from 8 or 9 on May 24th until about 2 in the morning on May 25th, you were sitting in your mother-in-law's house talking?

A Yes.

Q For those 6 hours or so?

A Yes.

Q All that period of time?

A Yes.

Q And you went to work the next day?

A Yes, I did.

Q You got up early, 7, 7 o'clock in the morning?

A Yes.

Q Tell us again what doors were in the store.

A One door in the front level with the street. There are 2 doors in the back, one leading to the apartment upstairs, one door leading to the basement downstairs, and there is also a door in the basement leading to the next door.

Q You were there on May 25 in the afternoon, were you not?

A Yes.

Q You were there 4 o'clock?

A Yes.

Q And you welcomed Mr. Valdez?

A Yes.

MR. SLOTNICK: Objection to the term "welcomed".

Q Mr. Valdez came in, you said hello to him?

A Yes.

Q Would it be a fair statement that Mr. Valdez was there about 30, 40 minutes?

A I can't remember exactly the time he was

there. 516

Q Would that be a fair statement?

A Yes.

Q So you and Mr. Valdez and Mr. Bruzon were together in the store on May 25 alone, 20 or 30 minutes?

A I wasn't together with him. I was in the upstairs premises and he went downstairs for a while.

Q Is it your testimony that he was downstairs all of the 30 or 40 minutes after the 30 or 40 minutes?

A Maybe 15, 25 minutes upstairs.

Q 15 of the minutes he was downstairs and 15 upstairs?

MR. SLOTNICK: Objection, your Honor, that wasn't the testimony.

Q How long was he downstairs and how long was he upstairs?

MR. SANTANGELO: Objection, your Honor.

A I can't give you an answer. I can't tell you exactly what time or how long he was there.

Q But you knew he was there?

A I knew he was there.

Q And it is your testimony that as long -- as far as you know yourself, Ramon Bruzon and Mr. Valdez were present at that time; is that correct?

A Yes.

Q There was nobody else there?

A The girl in the apartment just went out for lunch.

Q I'm talking about the store, the upstairs and downstairs, yourself, Ramon Bruzon, yourself and Mr. Valdez -- for a period of time there was nobody else?

A I don't remember anybody else.

Q Do you recall giving your business card to Mr. Valdez?

A No.

Q On how many occasions did you see Mr. Valdez?

A Probably saw him about 4, 5 times.

Q You saw him 4, 5 times?

A Yes.

Q Now, do you recall Mr. Valdez coming up in from the basement?

A Yes.

Q Do you recall going downstairs with Mr. Valdez? Do you remember that; don't you?

A Pardon me?

Q Do you remember him going outside the front door and you went out with him?

A Yes, I opened the door and went out.

Q And you walked outside?

A I walked a couple of steps.

Q You were outside, there is no dispute?

A Yes.

Q And he was outside?

A When I walked outside, he kept walking. I don't know where he went. I went back in the store. When he came back --

Q Well --

MR. SLOTNICK: Let him finish his answer.

Q Is it your testimony that you did not see where he went?

A That is right.

Q You heard the testimony here in this court?

A Yes.

Q That you stood in front or near the car --

MR. SLOTNICK: I object to his characterizing what he heard. The jury heard it. They know what it is.

THE COURT: Sustained.

Q Is it your testimony that you did not see Mr. Valdez take the suitcase?

A I didn't even see his car. I didn't even

know what kind of car he had.

Q What did you say to Mr. Valdez while you were in the store?

A Well, he told me what happened with Chino's business, went broke.

Q How many minutes did you talk to Mr. Valdez?

A I don't know, maybe 3, 4, 5 minutes.

Q He was in the store 30, 40 minutes, was he not?

A Yes.

Q And you were there for the same time, were you not?

MR. SANTANGELO: Objection, your Honor. Asked and answered 4, 5 times.

Q And Ramon Bruzon is your partner?

A Yes.

Q And he was working downstairs all the time, was he not?

A Yes.

Q And Mr. Valdez was down there with him?

A I don't know whether he was with him. I didn't go down with him.

Q Mr. Bruzon and Mr. Valdez were downstairs together. There is no dispute with that?

A He went downstairs with Ramon.

Q How long a period of time did Valdez and Bruzon spend in the basement?

MR. SLOTNICK: Objection to the form of the question.

THE COURT: If he knows.

A Maybe 15, 20 minutes, I don't remember the time.

Q Would it be a fair statement --

THE COURT: He told us 15, 20 minutes. What difference does it make if it was a fair statement or not?

Q Again I'll ask you this question. Is it true that for the 30, 40 minutes in question, when Valdez came into the store, it was just you, Valdez, and Bruzon?

MR. SANTANGELO: Objection.

THE COURT: Asked and answered.

We'll take a recess at this point.

(Whereupon a short recess was taken.)

(After recess:)

MR. SANTANGELO; I'll call Mr. Bruzon.

R A M O N B R U Z O N , a defendant herein, was called as a witness, having been first duly sworn by the Clerk of the Court, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. SANTANGELO:

Q Mr. Bruzon, in May of 1972, where did you live?

A 20-30 219th Street, Astoria.

Q At that time were you married?

A Yes.

Q How many children did you have?

A One.

Q How many children do you have now?

A Two.

Q Is your wife in court?

A Yes.

Q When did you come to this country?

A In 1964.

Q And in 1964, did you get a job?

A Yes.

Q Where was that?

A In a restaurant.

Q Where?

A LaGuardia Airport Restaurant.

Q How long did you stay there working in that restaurant?

A 7, 8 months.

Q And then what did you do?

A Started in a bank job.

Q Who did you work for?

A DeBars, contracting, painting.

Q That was in 1965?

A Yes.

Q How long did you work for them?

A 4 and a half years.

Q How much were you paid?

A $135 a week.

Q There came a time that you left DeBars Painting Company?

A Yes.

Q Did you go to work for someone else?

A Universal Painting.

Q When, '69?

A Yes.

Q How long did you stay with Universal Painting?

A About a year.

Q How much did you make with Universal Painting?

A $140.

Q You left Universal Painting, who did you work for?

A Jose Diaz Painting.

Q When was that?

A '70.

Q How much did you make there?

A $140.

Q How long did you work for All Service Painting?

A About a year, 10 months or a year.

Q And did you go to work for someone else after that?

A Yes.

Q Who was that?

A Inter-City.

Q After you finished working for Inter-City, what did you do?

A After I finished --

Q How long did you work with Inter-City?

A About a year and a few months.

Q And after that, what did you do?

A I start working with Pete Morell.

Q And when was that?

A April of '72.

Q Where did you live in April of 1972?

A 20-30 219th Street, Astoria.

Q Was that an apartment or a house?

A Apartment.

Q When did you start using the store at 90-19 31st Avenue?

A It was in April, 9th or 10th of April.

Q Did you start doing jobs in the middle of April of 1972?

A Yes.

Q And between the middle of April, 1972 and May 25, 1972, can you recall how many jobs you had?

A Yes.

Q Can you name approximately the first job that you had with Pedro Morell as your partner?

A We did a job 31st Avenue and 35th Street, apartment house.

Q How long did that take?

A It take about 4 days to do that.

Q Was that one apartment?

A Yes.

Q And after that, what did you do?

A We did another job in Shore Boulevard in Astoria.

Q What kind of job was that?

A Acoustic ceilings and after we did the ceilings, we painted the walls.

Q How long did that last?

A About 4 days.

Q How about the next job?

A The next job we did on 90th Street and 27th Avenue.

Q What kind of job was that?

A Outside house.

Q And how long did that take, approximately?

A About two weeks. We did two coats, two weeks, it was a big house, outside.

Q Where was that house?

A That house on 90th Street has a dead end.

Q Do you recall the exact address?

A The exact address, no; near 27th Avenue.

Q Do you recall the next job you did?

A The next job we did, Dr. Sanchez' office.

Q And approximately when did you do his office?

A The office we did about May 15th, 12, 15th.

Q How long did that last?

A About a --

Q What was the next job you did?

A East Hampton.

Q And you were out there until approximately when?

A May 20th.

Q You started?

A We started the job.

Q About May 20th. And how long did that job last?

MR. KAPLAN: Which one are we talking about?

MR. SANTANGELO: East Hampton.

Q (Mr. Santangelo continuing) How long did that job last?

A 2 days.

Q And the next job you had after East Hampton was what?

A Dr. Sanchez' house.

Q And after you did Dr. Sanchez' house, you were arrested on May 25th, in 1972; is that right?

A Yes.

Q Now, you know Abano Ramos?

A Yes.

Q Can you tell the jury what the arrangements were between you and Mr. Ramos with respect to that store?

A We're looking for a place to put all the equipment, the paint and somebody told me a guy had a big store he wanted to rent part of the basement, and we talked to him about it because we need some place to put all the equipment we have.

Q What kind of equipment did you have?

A Rollers, one compressor for use on acoustic ceilings, ladders and drop cloths.

Q How much rent did you pay?

A $50 a month.

(continued next page.)

Q Who did you pay it to?

A Mr. Ramos.

Q Do you know what kind of business he had at that store?

A Fruit business.

Q Did you ever sell fruit to anybody in that store?

A I sell to customers?

Q And did you sell fruits to anybody in that store?

A No.

Q Do you know Alfredo Valdez?

A Yes.

Q When did you meet Alfredo Valdez?

A I think at the end of April.

Q How many times did you see him before you were arrested?

A 5, 6 times, maybe.

Q Did you see Valdez talk to Ramos?

A Yes.

Q And did he talk to Ramos every time he came to that store?

MR. KAPLAN: I'll object to the leading of the witness.

THE COURT: I'll allow it.

A All the time when I come for a job, I saw him talking with him in the place.

Q So you would go to the store in the morning?

A Yes.

Q To pick up your paints?

A Yes.

Q Then leave the store for the whole rest of the day; is that right?

A Yes.

Q You would come back after you finished your job and you would take care of your equipment; is that right?

A Yes.

Q And then you would go home?

A Yes.

Q Now, I show you defendant's exhibit A in evidence and ask you if you can recognize it.

A Yes.

Q What is that?

A This is part of the front of the basement.

Q Now, in that picture, can you tell the jury what are the things that are piled up in the corner?

A Boxes.

Q And what were those boxes used for, if you know?

A Abano Ramos make the candy coconut.

Q When did he start making candy coconut?

A 3, 4 days before we were arrested.

Q About 3 or 4 -- during the week before you were arrested?

A Yes.

Q Now, did you see Abano Ramos the day before you were arrested?

A Yes.

Q That was on the 24th; is that right?

A Yes.

Q Did you speak to Alfredo Valdez on the phone?

A Never.

Q Did you talk to Alfredo Valdez on the phone about cocaine?

A No.

Q Did you see Alfredo Valdez on the day you were arrested?

A Yes.

Q Where did you see him?

A In the basement.

Q What were you doing in the basement when he came down?

A I washed my rollers and my brushes.

Q I show you this picture and I ask you if you know what that is?

A Yes, this is the plate we used to clean the brushes up.

Q Is that a fair representation of the basement as it was on May 25, 1972, the day you were arrested?

A Yes.

MR. SANTANGELO: May I have it marked for identification, please?

THE CLERK: Document marked for identification as Defendant's exhibit J.

(So marked.)

MR. SANTANGELO: I offer it in evidence.

THE CLERK: Defendant's exhibit J, previously marked for identification, marked in evidence.

(So marked.)

Q Now, did you talk to Alfredo Valdez on the day you were arrested?

A Yes.

Q And you talked to him in the basement, did you not?

A Yes.

Q Now, can you tell me what he first said to you?

A He's coming down, he said hello. He asked me, you see Ramos?

Q And what did you say to him?

A I said no, I no see him.

Q Did you have any other conversation with him?

A No. He told me what you doing? I say just washing my equipment.

Q Can you point out in this picture where you were working when Valdez was in the basement?

A Right here (indicating) on this spot where you clean the brushes. Where I got the bensine to clean the brushes.

Q Now, where was Valdez while you were working there?

A Walking around in front of the basement.

Q Is that the part of the basement where the boxes were?

A Yes, sir.

Q And how long did he stay in the basement?

A 15, 20 minutes.

Q And did you talk to him for the 15, 20 minutes while he was here?

A I keep cleaning my brushes and rollers.

Q Now, after you clean your brushes and rollers, did you do anything else?

A I clean up, take all the garbage and put it in a garbage can.

Q Did there come a time when Valdez left the basement?

A Yes, I saw him when he was going out.

Q After he left the basement, what did you do?

A After I take all the garbage and I try to go now to put the garbage out from the back.

Q Can you show us in this picture where you went to take the garbage out?

A Over here (indicating).

Q Now, by garbage, what do you mean by garbage?

A When I finish working with the brushes, we put it in the paper, like this, the brushes don't dry so quick. We take all this garbage and put it in a can, the truck come in the morning and put the garbage outside in the

back.

Q You put the garbage outside?

A In the back.

Q What happened as you were walking down that corridor?

A When I start walking to the door I hear somebody is coming down, I see two men with khaki pants and dirty clothes, got a gun in the hand.

I opened the door, I don't know what happened. He tell me police officers. I stop just when I open the door.

Q When you saw those men, were their guns drawn in the basement? Were you afraid?

MR. KAPLAN: Objection, your Honor.

THE COURT: I'll allow it.

A I see a gun.

Q And you heard someone say, "Police," what did you do?

A Stop right away.

Q After you stopped, what happened to you?

A Well, I was by that time -- I walk one step, two steps, about three steps outside the door and saw two men outside on the fence. They told me stop right there or I kill you right there, put your hands up.

Q Did they handcuff you? Did they put your hands in handcuffs?

A Put me on the wall and put my hands in the back.

Q On that day, Mr. Bruzon, did you talk to Valdez about cocaine?

A No.

Q Did you mix cocaine for 40 minutes in plastic bags with your hands?

A No.

MR. SANTANGELO: No further questions.

CROSS EXAMINATION

BY MR. KAPLAN:

Q Mr. Bruzon, tell us what the dimensions were of the basement that you were working in? How big was the basement?

A About 125 feet.

Q One way or both ways, square feet?

A Long.

Q And how many feet wide?

A 12 feet.

Q12, 15 feet?

A 12, 15 feet.

Q Where were the steps located with respect

to the walls of the basement? Were they in the middle, on the left side, on the right side?

A The one coming from up?

Q The ones coming from upstairs, yes.

A When coming inside of the store, by the right, right. You have to turn around, take the step to the front of the store going down that way.

Q Where were you located with respect to the step?

A I don't know from much English,you know.

Q Were you toward the back of the store, toward the front?

A The steps going toward the front of the store.

Q Where were you located?

A By the back.

Q But you were in the middle of the store, -- when I say the middle, you were in the proper of the store?

A In the basement.

Q In other words, you could see the rest of the basement from where you were located in the basement?

A Not complete because we have too many things in there.

Q You could see the four walls without any problem, and you could see the door without any problem?

A Not at that time.

Q You couldn't see the floor?

A Not complete. They have stepladders on the floor, garbage cans.

Q I don't mean the actual physical floor, I mean you could see everything without obstructions? Do you know what I mean by obstructions? I withdraw the question.

You could see things laying on the floor and the floor itself?

A If I walk all around I could see.

Q And you were in the basement?

A Yes.

Q During this whole period of time, would that be a fair statement -- during the period that Alfredo Valdez was downstairs?

A I was in the basement with -- Yes.

Q Approximately how long did Valdez stay in the basement?

A 15, 20 minutes.

Q And he was down there with you in the

A Not with me. He asked me about some guy and I keep working there.

Q Did you ask him as a matter of curiousity what he was doing standing there?

A No, because it's not my place.

Q You had all your things in the place?

MR. SANTANGELO: Objection.

A When I come there I see him in the place.

Q You were paying rent for the premises?

A Yes.

Q And you stored your material down there?

A Yes.

Q And you worked there every day, did you not?

A Yes.

Q So it was your place, was it not?

A It was not my place. I gave part the rent for use of part the basement.

Q But you were down there in the basement by yourself?

A Yes.

Q Nobody else was down there at the time?

A No.

Q Besides yourself and Mr. Valdes?

A Yes.

Q By the way, you said you did four jobs in April and May of 1972?

MR. SANTANGELO: Objection, your Honor.

Q I don't know how many jobs, four or more.

A I can tell you all the place I did the jobs.

Q Tell us again.

THE COURT: He's been all through that.

A I did the job 31 Avenue -- 35th Street apartment.

Q That is one?

A Shore Boulevard in Astoria I did another apartment. We did a house, outside house, 90th Street, dead end street near 27th Avenue.

Q When was that? What was the date of that?

A About May 1 or 2.

Q And what was the one after that that you told us about?

A After that we did Dr. Sanchez' office.

Q How long did that take?

A We did a job take us about 6, 7 days.

Q And you did these jobs with Mr. Morell?

A Yes.

Q But you remember this and Mr. Morell doesn't.

MR. SANTANGELO: Objection, your Honor.

Argumentative.

Q During the break, did you have a conversation with your attorney? Did you talk to your attorney after we broke?

A Yes.

Q You talked to Mr. Morell too?

A Yes.

Q By the way, have you ever been in the Estorelle Bar?

A No.

Q Did you ever hear of the bar?

A I hear something about this bar but I don't know that bar.

Q Isn't thatin your neighborhood?

A No.

Q Isn't that a well known bar for Spanish speaking people in the area?

A Many places in New York that have Spanish bar.

Q When you say Valdez went downstairs, what did he say to you?

A He asked me where is Ramos.

Q And then what did he do?

A Well, he stay about 2, 3 minutes, looking what I'm doing, and after he go into the front.

Q Did he ask you what you were doing?

A No.

Q Did you have any further conversation with him at that time or at any other time?

A Where is Ramos.

Q He asked you once?

A He said Hello. I said what you doing. I wash my brush for the next day and that's it.

Q And he didn't talk to you? You and he were down there for 15, 20 minutes, and he didn't talk to you?

A He was other side of the basement.

Q You could see him?

A Yes.

Q And he could see you?

A Yes.

(continued next page.)

Q By the way, there was no person that came in during that time, was there?

A No.

Q And you knew Mr. Morell was upstairs?

A Yes.

Q And you were downstairs?

MR. SANTANGELO: Objection, your Honor.

THE COURT: That's a fact. That is an established fact.

Q I show you what has been marked as Government's exhibit 1 in evidence, and ask you if that is a fair and accurate representation of part of the basement premises that you occupied.

MR. SANTANGELO: Objection.

A It's part of the basement.

Q It is?

A It's part of the basement.

THE COURT: He said yes.

Q Is it not a fact that what's depicted in this picture --

A I don't know.

Q You never saw that before?

A No.

Q All that that was laying out in the middle of the basement?

MR. SANTANGELO: Objection, your Honor. That's not the testimony and we have lots of boxes here.

THE COURT: The question is, did you see these items on the floor that day that you were there and Mr. Valdez was there? Did you see those items on the floor the day Mr. Valdez was down in that cellar on May 25, 1972? Did you see it?

Q You didn't see that?

THE COURT: He has to answer the question.

MR. KAPLAN: He answered it.

THE COURT: Mr. Kaplan, will you please ask him that question?

Q Take a look at exhibit 1 again, and I ask you if you saw any of those items down there.

A No.

Q Never saw them?

A No.

Q The bottles, the plastic bags, the shopping bag, the garbage can?

A No.

Q Nothing.

MR. SANTANGELO: Objection.

THE COURT: I'll allow it.

A There is no garbage cans in the picture. I know the boxes --

Q Well --

MR. SLOTNICK: Well, will Mr. Kaplan let him answer the question and not interrupt him?

Q Now, you testified that just before you were arrested you werewalking towards the corridor or walking outside to take out the garbage, is that not so?

A Yes.

Q You heard the testimony that you were running?

MR. SANTANGELO: Objection, your Honor as to the characterization, repeat of the testimony.

THE COURT: It's what he says he was doing.

Q Is it your testimony that you were not running away?

MR. SANTANGELO: Objection. Let him ask a question. Was he running?

THE COURT: Ask him.

Q Were you running or were you not running?

A Yes, I did .

Q You did run, didn't you?

A Yes.

Q Didn't you testify on direct examination --

MR. SANTANGELO: Objection, your Honor. The

question, "Didn't you testify on direct examination" obviously he meant

THE COURT: He didn't finish the question yet. He has a right to finish the question. Finish the question.

Q Did you testify on direct examination that you were taking the garbage out?

A Yes.

Q And that you were walking towards the backyard?

A Yes.

Q And at that time you were confronted by police officers?

A The doors closed by that time --

Q Did you --

MR. SLOTNICK: Let him finish his answer.

MR. KAPLAN: I want to make sure which door.

A The back door, the doors closed when I hear somebody coming from the steps, I look around. I see two men with dirty clothes with a gun in the hand. When I look I see the man, I just open the door. When I walked 2 steps I saw the police outside, they told me "stop, police officers."

Q Were you running or were you not running?

A I just open the door right away.

Q It's your testimony that you were not running?

MR. SANTANGELO: Objection.

THE COURT: Let him testify.

Q Were you running or not running?

A I was close to the door, I just opened the door right away. When I see the guy behind me --

Q Were you holding garbage in your hand?

A One garbage can on the floor because I left one on the floor to open the door.

Q In other words, it's your testimony that you weren't running?

MR. SANTANGELO: Objection, your Honor, he testified he ran away because he was scared.

THE COURT: He's not saying that at all. He puts the garbage can on the floor. That was the other day about an hour ago. We are talking about now, when he's testifying.

MR. SANTANGELO: All right.

THE COURT: Listen to his testimony. Lawyers have a habit of getting up and saying what they would like to know what the previous testimony is. You have to listen to all of it, and what he

says now is what you reflect now, and I'm telling you about inconsistent statements in my charge. That's the reason for it. It can't be corrected by anyone shouting in the courtroom. It can't be corrected that way.

Q You told us something about Mr. Ramos with candy?

A Yes.

Q What was he doing with the candy?

A He make candy in the store and sell it.

Q Would he make the candies?

A He take the coconuts and put in a big can, put some sugar and mix it and put small piece of paper in the box and sell it.

Q Where would he sell it?

A I don't know.

Q Where were the candies made, specifically in the store? Where were they made, in the store?

A I saw the big table in the back, in the freezer, they do it there. In the back they have a big table where they put the candy.

Q You haven't told us exactly what he was doing with the candy on the table.

A When he mix the coconut it's not so hot, he

had to pull it out and put it in a small place, and when it was dry he take it back and put it in the box.

Q Was he doing that on May 25th when you were in the store? Was he making candy?

A I don't know if he was there in the afternoon.

Q The question is; when you were there was he making candy?

A No.

THE COURT: That's the question. He wasn't answering the question.

Q At the time of the arrest or of your arrest, on May 25, was there anything in the freezer that you are talking about?

A In the freezer they got eggs and some fruits in there.

Q There were no coconuts or candy in the freezer?

A They don't have to put it in the freezer.

Q I show you what has been marked as defendant's exhibit B in evidence, and ask you if that's a fair and accurate representation of the freezer on the premises?

A Yes.

Q And can you tell us, are there any eggs or

candies in the freezer?

A No, because this is after the arrest.

Q Sir, tell us what's in the freezer.

MR. SANTANGELO: Objection, this picture speaks for itself.

MR. SLOTNICK: It's misleading. He said it was after the arrest.

MR. KAPLAN: It's based on a fair representation.

THE COURT: The jury can see it. Why should he explain it.

MR. KAPLAN: I have no further questions.

MR. SANTANGELO: No further questions.

THE COURT: Step down, thank you.

Any other witnesses?

MR. SANTANGELO: Not at this time.

THE COURT: Do you intend to call any other witnesses?

MR. SLOTNICK: Yes, your Honor; what we went over before.

THE COURT: All right, the case is complete except for one matter that did come before the Court. I'll give them until tomorrow morning to see whether or not that can be produced, whatever

it may be. At this time it doesn't make any difference to you. We'll show the pictures now. Do you mind looking at them now, and then you'll be through for the day.

MR. SLOTNICK: While they are seeing the pictures, may we have a side bar?

THE COURT: While you are looking at the pictures, you'll notice that the cocaine is no longer in my courtroom. You won't be able to take it into your jury room, I guarantee you that. I have an absolute feeling about it once it's exhibited to the jury and once we have marked it in evidence. Once it's been conceded it's cocaine, it serves no other useful purpose. We all agree you saw it and it'll stay out of my courtroom, but it is an exhibit.

(Whereupon a side bar conference was had:)

MR. SLOTNICK: With regard to defendant's exhibit I in evidence, the card, I make the following representation to this Court and I'm ready, willing and able to swear under oath, there is a black mark under that mark, there was some writing of mine. There was never any printing, and there was nothing put there by the defendant.

Unfortunately, it happened, it's the only

card that we are -- were able to find. I would like you to tell the jury to disregard that black mark.

THE COURT: I'll tell them that.

MR. KAPLAN: With respect to the offer of proof concerning the document, it appears to me that your Honor had already ruled on that matter, that this was put -- addressing the direct testimony of defendant, concerning the fruit store. They are offering documents to show that someone applied for a fruit store.

THE COURT: Wait until tomorrow morning. I haven't passed on anything yet. I have to give them an opportunity, I can't prevent them from doing anything.

MR. SLOTNICK: Would your Honor indicate --

(Whereupon side bar conference was concluded.)

THE COURT: On the card that's going to be submitted to you, you see in the lower left hand corner, there will be a black mark. That has nothing to do with the card itself, so disregard it. The card itself the defendants claim was in the condition at the time that he says that

he was in business without the black mark. Nothing under the black mark, no printing whatsoever. I'll discharge you for the evening, keep an open mind and report downstairs about 10:15 and then we'll send you up here and we'll continue with the facts of the case.

Good night.

(Whereupon the jurors were excused.)

(Whereupon the court adjourned for the day.)

* * * *

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* * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

Plaintiff,

- against - 72 CR 644

PEDRO MORELL and
RAMON BRUZON,

Defendants.

----------X

United States Courthouse
Brooklyn, New York

March 7, 1974
10:00 A.M.

B e f o r e :

HON. MARK A. COSTANTINO, U. S. D. J.

Ilene Ginsberg
Acting Official Court Reporter

APPEARANCES:

EDWARD J. BOYD, V., U.S. ATTORNEY

BY: KENNETH KAPLAN, AUSA

BARRY SLOTNICK, ESQ.
Attorney for defendant Morell

GEORGE SANTANGELO, ESQ.
Attorney for defendant Bruzon

THE CLERK: Criminal cause on trial, U.S.A. v. Pedro Morell and Ramon Bruzon.

(Jury not present)

MR. SLOTNICK: Ready to proceed.

MR. KAPLAN: May we have offers of proof? There was a legal argument yesterday --

MR. SLOTNICK: Mr. Kaplan knows I have several witnesses to show possession, other than the defendants. I told him that this morning and the New York State man will come with a certified copy. That is an offer of proof more than he is entitled to.

MR. KAPLAN: I have the certified copy which states that Ramon applied for a license to have a fruit store but there was no fruit store.

THE COURT: If he says he has more witnesses I must listen.

MR. KAPLAN: The document that says he applied for a fruit store license --

THE COURT: I am not going to foreclose it. I'll hear it and then if I decide it should not go in, it won't.

MR. SLOTNICK: I have one witness I would like to call. I would ask only three questions about

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something I learned this morning and I bind myself to three questions.

MR. KAPLAN: I would like an offer of proof.

THE COURT: There must be an end to this case.

Try your case. Put your witnesses on the stand.

I will keep quiet. I will say nothing in front of the jury.

The only issue in this case is whether or not they were in possession of the cocaine on the day they were arrested -- I don't care who else you put on the stand -- and that would affect my charge.

MR. SLOTNICK: Can we then move expeditiously?

THE COURT: Tell me the three questions.

MR. SLOTNICK: I will ask Mrs. Morell what May 24th was, how late she stayed at her mother's house and why she knows the time -- because her brother turned back the clock so they should stay an extra hour.

THE COURT: You know, you couldn't tell me what you did March first or any day of last week. Tell me what you did the morning of March 4, last week?

MR. SLOTNICK: It was her birthday. There was a party. Her husband got arrested the next day.

MR. KAPLAN: Your Honor, this is buttressing the direct.

MR. SLOTNICK: Of course it is, and the Government does it every time they play a tape recording.

THE COURT: You want to put her on? Go ahead. Ask the three questions but remember, you are dealing with people who are intelligent, in the jury box.

MR. SLOTNICK: It's plausible to me, Judge.

THE COURT: May 24, 1972?

MR. SLOTNICK: Her birthday.

THE COURT: April, 1973 was my birthday and I don't remember what I did.

MR. SLOTNICK: You weren't arrested the next day.

THE COURT: I know -- I come here ever day -- I must have been in court.

MR. KAPLAN: They represented that no substantive witness was supposed to be in this courtroom.

THE COURT: It's not a substantive witness.

MR. KAPLAN: It seems to me --

THE COURT: Mr. Kaplan, sit down. You will be better off. You know my feelings.

Bring in the jury.

(Jury entered jury box at 11:35 a.m.)

MR. SLOTNICK: Angelo Sablon.

A N G E L O S A B L O N, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record, please.

THE WITNESS: Angelo Sablon, S-a-b-l-o-n.

DIRECT EXAMINATION

BY MR. SLOTNICK:

Q How old are you Mr. Sablon?

A Fifteen years old.

Q Do you go to school?

A Yes.

Q What school?

A New Town.

Q New Town, what?

A New Town Annex.

Q Is that a high school?

A Yes.

Q Have you ever seen Mr. Bruzon or Mr. Morell before?

A Yes.

Q Tell us under what circumstances you have seen them.

A They are painters.

I have seen them with trucks and they paint houses and apartments.

Q Did you see a store that they used to enter daily?

A Yes.

Q Where was that store?

A 91st Street.

Q And where?

A 31st Avenue.

Q Did you see a fruit stand in front of that store?

A Yes.

Q Did you know a man by the name of Chino?

A Yes.

Q Do you know his real name?

A No.

Q Did Chino sell fruit?

A Yes.

MR. KAPLAN: Objection to the leading.

THE COURT: Yes.

MR. SLOTNICK: I'm trying to move it along.

Q What do you know about Chino and the store?

A He sold fruit. That's all I ever knew about him.

Q What do you know about the store?

A It was not that big. He had the fruit outside and inside.

Q Did you buy fruit from him?

A Yes.

Q Did he give you fruit?

A Yes.

Q Were there occasions when you didn't pay for the fruit?

A Yes.

Q When was the last time you saw Chino?

A May.

Q May of when?

A I don't know.

THE COURT: What year?

THE WITNESS: '72.

THE COURT: You know it was May 1972? What makes you say that?

THE WITNESS: That was the last time I saw the person -- in '72.

THE COURT: You remember that?

THE WITNESS: Yes. After that, he closed up

and didn't give us any more fruit.

THE COURT: When did he close up?

THE WITNESS: May, but I don't know the date.

THE COURT: May is a big month. When?

THE WITNESS: Near the end.

THE COURT: How close to the end?

THE WITNESS: I don't remember the exact date.

Q How do you remember it was May, 1972?

A Because we all used to hang out on the corner next to the candy store and go there and buy fruit. Sometimes he would tell us "Come here, boys" and the people would go near the fruit and he used to give us fruit and we would go to the corner and eat the fruit.

Q Do you remember when these two gentlemen were arrested?

A Yes.

Q Did you see it happen?

A No.

Q Did you see them leaving the store under arrest?

A I think so, yeah.

Q Do you remember what the weather was?

A It was a sunny day.

Q Do you still or have you since that day, hang out in that area?

A Yes, I still hang out there too.

Q After the day they were arrested did you ever see Chino again?

A No.

Q By the way, have you ever spoken to me before this morning?

A Yes.

Q Before this morning?

A No.

Q When was the first time you met me?

A In the witness room.

Q When was that?

A About eleven o'clock, ten after eleven.

MR. SLOTNICK: Thank you.

Your witness.

MR. SANTANGELO: No questions.

CROSS EXAMINATION

BY MR. KAPLAN:

Q Mr. Sablon, is it?

A Yes.

Q I'm Kenneth Kaplan, the assistant United States Attorney.

Did you ever speak to Mr. Morell or Mr. Bruzon about coming here to testify today?

A No, they just told me "Were you there the day it happened?"

Q When did you speak to Mr. Morell or Mr. Bruzon?

A Well, it was yesterday when they told us "Were you there" and everything and I said, "Yes."

Q It was just yesterday that Mr. Morell and Mr. Bruzon asked you those questions?

A It was before he told me but he told me to come today.

Q Who is the person -- Mr. Morell or Mr. Bruzon?

A Mr. Bruzon.

Q When did he first ask you the questions?

A When was, what?

Q When did he first ask you the question as to you observing anything May of 1972?

A I don't remember. It was last week.

Q Last week was the first time?

MR. SLOTNICK: He is asking a question by --

THE COURT: You were not interrupted. Let him ask.

A It was last week.

Q That's the first time you had a conversation

with Mr. Bruzon about the events of May 1972?

A Yes. He asked me "Did you see anything?"

Q They asked you to testify yesterday?

A Uhm hmm.

Q Now, this was May of 1972 which was almost two years ago; correct?

A Yes.

Q Can you tell us what if anything, other than the fact you were hanging out at the store, makes you recall this particular month out of all the fifteen years you have lived?

A Look, the thing is, I hang out -- my friends hang out there.

Q How many years have you been hanging out there?

A Three years.

Q Thirty-six months?

A Yes.

Q But you remember May of 1972?

A I can remember anything you tell me.

Q Every month and year?

A Things that happen around there that don't usually happen you remember, don't you?

Q Do you remember things you did in April, 1972?

A In April, things I did? Some of the things, not all.

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Q In that specific month, you can look back two years from today and say, "Yes. I remember what I did in April, 1972" or "1971"?

A Yeah, I can remember.

Q And '70, you can remember?

A If they were good times I can remember the good times.

Q You remember the specific things you were doing in a specific month?

A You can say that I remember good things or bad.

Q Let's talk about May 25, the date the defendants were arrested and May 24, the day before they were arrested. Do you recall specifically, those days?

A I remember, yeah.

Q Do you remember May 24, 1972?

A No. I remember -- I don't remember the date.

Q Do you remember what you were doing that day?

A Not May 25. I remember May.

Q What did you do?

A I went to the school and played basketball in the park and then went to pick up fruit and get a soda.

Q Do you remember if you picked up fruit on May 24 and May 25?

A I don't remember the exact date.

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Q There was a fruit store May 24 and May 25 --

MR. SLOTNICK: Objection.

THE COURT: Let him examine.

A There was a fruit store.

Q Tell us what type of fruit was there the day in question.

A Apples, bananas, grapes.

Q Oranges?

A Umm hmm.

Q The day the defendants were arrested, the fruit store was outside?

A They had them outside like that.

MR. KAPLAN: No further questions.

RE-DIRECT EXAMINATION

BY MR. SLOTNICK:

Q Did anything unusual happen May, 1972, to trigger your memory about this event?

A No, there were -- no.

Q Anything unusual happen in the neighborhood, May, 1972?

MR. KAPLAN: Objection to "unusual."

THE COURT: Yes.

MR. SLOTNICK: He testified on cross examination.

Q Did something happen in May, 1972, to cause you to remember the event?

A Yes.

Q What?

A These men got arrested.

Q That wasn't a normal occurrence in the neighborhood?

A No.

Q After these men were arrested did you ever see Chino again?

A No.

RE-CROSS EXAMINATION

BY MR. KAPLAN:

Q What day did the fruit store stop operation in May 1972?

A Right after these people got arrested. The next day, we came from school to get fruit. The store was closed down.

Q But the day before there was fruit there?

A Yes, there was fruit.

MR. KAPLAN: Nothing further.

MR. SLOTNICK: No further questions.

THE COURT: Step down.

Next witness.

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MR. SLOTNICK: Mario Mesa.

M A R I O M E S A , having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record, please.

THE WITNESS: Mario Mesa, M-e-s-a.

DIRECT EXAMINATION

BY MR. SLOTNICK:

Q Mr. Mesa, how old are you?

A Eighteen.

Q And do you go to school?

A Yes.

Q What school?

A New Town High School.

Q Do you know Mr. Sablom?

A Yes, I know him.

Q When was the first time you spoke to me?

A About ten minutes ago.

Q Are you nervous?

A No.

Q Now, do you know any of the gentlemen sitting at that table?

A Yes.

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Q Which gentlemen -- point out which gentlemen you know.

A Pablo and the young fellow over there.

Q Tell us how you know them.

A Excuse me?

Q Tell us how you know them.

A Because they have a paint store. They used to bring their paint downstairs to the basement. I know them a long time from Victor's shop.

Q Did anything happen to them --

MR. SLOTNICK: Withdrawn.

Q (continuing) Do you come from the neighborhood in which they have their paint shop?

A Yes.

Q Do you know the store where they have their paint shop?

A Yes.

Q Tell us about that store and anything else surrounding it you can remember.

A They used to be a fruit store there and it closed down after the problems happened and now there is a Pizzeria there.

Q Do you know the man who ran the fruit store?

A Everybody called him "Chino."

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Q Do you know his other name?

A No.

Q Did you buy fruit from him?

A Yes.

Q Did you ever deal with him?

A Yes.

Q Did he give you fruit?

A Yes.

Q Tell us what that was about?

MR. KAPLAN: Objection.

THE COURT: Sustained.

Q You knew Chino; correct?

A Yes.

Q Did you ever have occasion to talk to him?

MR. KAPLAN: Objection --

THE COURT: Sustained --

MR. KAPLAN: (continuing) as to conversations.

MR. SLOTNICK: I'm asking, did he ever speak to him. That is not objectionable.

THE COURT: You don't think so?

Ever talk to him?

THE WITNESS: No.

Q Now, do you remember when these two men got arrested?

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A Yes.

Q Do you remember when it was?

A No, but I remember May of 1972.

Q How do you remember that?

A It was like Spring, kind of hot.

Q Do you remember whether the fruit store was open during that period of time?

A Yes.

Q Do you remember when it closed?

A About the end of May.

Q How do you know it was the end of May?

A That's when they got arrested. After they got arrested they closed the fruit store.

Q How do you know when they were arrested?

A I was there.

Q You saw them get arrested?

A Yes.

Q Did you speak to me this morning?

A Yes.

Q Did I tell you the date they were arrested?

A No.

Q The month they were arrested?

A No.

Q Did I ask about the weather?

A Yes.

Q What was the weather like when they were arrested

A It was kind of hot.

Q Did you ever see Chino after they were arrested?

A No, he disappeared.

MR. KAPLAN: Objection, your Honor. That is a conclusion.

THE COURT: The answer is, yes or no.

MR. SLOTNICK: He said, "No."

Q Do you remember the date they were arrested?

A Not the date, but the month and year.

Q The month and year.

Do you remember them being taken out of the store?

A Yes.

Q Did you go back to the neighborhood the next day?

A I was around.

Q Did you look at their store the next day?

A No.

Q You don't remember looking at the store the next day?

A It was closed.

Q Was the fruit stand open?

A No, it was closed after the case they had.

Q You never saw Chino again?

A No.

MR. SLOTNICK: Your witness.

CROSS EXAMINATION

BY MR. KAPLAN:

Q Ever talk to Mr. Morell or Mr. Bruzon about coming to testify here?

A No.

Q You never talked to Mr. Morell or Mr. Bruzon?

A Who is Mr. Morell?

Q What did you call the two men?

A That's Pedro and that's -- I forget the other name.

Q That's Ramon.

A Ramon.

MR. SLOTNICK: Objection.

Q Never had a conversation with these two men?

A No. He told me to do a favor for him and come here.

Q When did you speak to Ramon or Pedro?

A Yesterday.

Q Was that the first time you spoke to them about the case?

A Oh, it was yesterday.

Q The first time?

A Yes.

Q You hadn't spoken previously to them?

A No.

Q Who was the person you spoke to?

A The young fellow over there (indicating).

THE COURT: Which young fellow?

THE WITNESS: I don't know his name -- the lawyer.

THE COURT: Which lawyer, Mr. Slotnick?

THE WITNESS: Yes.

Q Where were you when they came to see you?

A In the room.

Q Where were you yesterday when they came to see you for the first time?

A I was around the fruit store.

Q In the neighborhood?

A We hang around there.

Q Who were the people who came to see you?

A Just him.

Q The lawyer?

A No.

Q Pedro?

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Q Can you tell us if the fruit store was in operation that day?

A Yes.

Q Where was it located -- in the front?

A In the front.

Q It was?

A Yes.

Q You're sure about that?

A Positive.

Q What were they selling?

A Fruit.

Q What type?

A Apples, grapes, bananas -- all kinds of fruit.

Q The same day they were arrested?

A Yes.

Q There is no doubt in your mind about that?

A No.

MR. KAPLAN: Thank you.

No further questions.

THE COURT: All right. Step down.

Next witness.

MR. SLOTNICK: Antonio Suarez.

THE COURT: Raise your right hand.

THE WITNESS: Oh, yes. It is the first

time I'm here.

A N T O N I O S U A R E Z, having first been duly sworn by theClerk of the Court took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record, please.

THE WITNESS: Antonio Suarez, S-u-a-r-e-z.

THE COURT: Sit down here.

(Witness complies)

DIRECT EXAMINATION

BY MR. SLOTNICK:

Q Mr. Suarez, how old are you?

A Sixty-nine, going to be this month, seventy.

Q Where do you live?

A I live 60th Avenue, close to Rego Park.

Q In Queens?

A Yes, Queens, all the way up near St. Johns Hospital.

Q Do you know anybody sitting at that table over there?

A I know that man there (indicating).

Q Do you know his name?

A No. I never see the man. I see the truck and paint. He used to be painter and I see the truck and I

remember he sell fruit. I work from seven o'clock to nine o'clock.

Q Seven at night to nine in the morning?

A No, seven in the morning to nine o'clock at night, part time and when I want apple -- I never saw him selling apples.

Q Who did you see selling apples?

A Some guy named Chino. I know his name.

Q When was the last time you saw Chino?

A Very long, very long.

Q How long did you know Chino?

A Never have much with him, not much.

Q How long has it been since you have seen him?

A Not for a long time.

Q What kind of business was Chino in?

A He used to have a fruit store. I look for the apple.

Q Did Chino have a fruit store?

MR. KAPLAN: Objection to the leading.

THE COURT: Sustained.

Q Do you know if that man (indicating) --

A That man drive a truck with the paints --

Q (continuing) was in the same store with Chino?

MR. KAPLAN: Objection to the leading.

A I see him in the truck all the time. I don't know the store.

Q On what street did you see the truck?

A 31st Avenue, 91st Street, around there.

Q What kind of truck was it?

A A truck, a small truck.

MR. KAPLAN: Objection to any leading.

MR. SLOTNICK: I'm not leading. I asked the kind of truck it was.

Q Did you ever see him sell fruit?

A No, I never see him sell fruit.

Q The name of the man selling the fruit, was, what?

A Chino. I don't know if it was his real name.

Q About how long has it been since you saw him, if you remember?

A I start working down around 31st Avenue.

Q And you haven't seen him for how long?

MR. KAPLAN: Objection. He answered the question.

THE COURT: No.

Q When was the last time, if you remember, that you saw Chino.

A I don't know. I don't know. I don't remember.

Q Would it be about six months ago?

A I don't think I look for him --

MR. KAPLAN: Objection. Leading.

MR. SLOTNICK: Withdrawn.

No other questions.

MR. SANTANGELO: No questions.

MR. KAPLAN: No questions.

THE COURT: Step down. You are finished.

THE WITNESS: All finished. Now, I take my mother-in-law to eat.

MR. KAPLAN: Side bar.

(Side bar discussion)

THE COURT: You don't know how much temperance it takes to keep quiet.

MR. KAPLAN: If I may state at this time, Mr. Slotnick represented there would be three witnesses --

MR. SANTANGELO: Absolutely not correct.

THE COURT: Yes, it is so.

MR. SLOTNICK: I made a mistake then.

THE COURT: Go back --

MR. SLOTNICK: If your Honor says I said three witnesses, I made a mistake.

THE COURT: Quite.

Go back to the beginning of the session, Miss Ginsberg, and read it to us.

(Record read by reporter.

Record read as follows:)

"MR. SLOTNICK: Ready to proceed.

MR. KAPLAN: May we have offers of proof? There was a legal argument yesterday --

MR. SLOTNICK: Mr. Kaplan knows I have several witnesses to show possession, other than the defendants. I told him that this morning and the New York State man will come with a certified copy. That is an offer of proof more than he is entitled to.

MR. KAPLAN: I have the certified copy which states that Ramon applied for a license to have a fruit store but there was no fruit store.

THE COURT: If he says he has more witnesses I must listen.

MR. KAPLAN: The document that says he applied for a fruit store license --

THE COURT: I am not going to foreclose it. I'll hear it and then if I decide it should not go in, it won't.

MR. SLOTNICK: I have one witness I would

like to call, I would ask only three questions about something I learned this morning and I bind myself to three questions.

"MR. KAPLAN: I would like an offer of proof.

"THE COURT: There must be an end to this case.

"Try your case. Put your witnesses on the stand.

"I will keep quiet. I will say nothing in front of the jury.

"The only issue in this case is whether or not they were in possession of the cocaine on the day they were arrested -- I don't care who else you put on the stand -- and that would affect my charge.

"MR. SLOTNICK: Can we then move expeditiously?

"THE COURT: Tell me the three questions.

"MR. SLOTNICK: I will ask Mrs. Morell what May 24th was, how late she stayed at her mother's house and why she knows the time -- because her brother turned back the clock so they should stay an extra hour.

"THE COURT: You know, you couldn't tell me what you did March first or any day of last week. Tell me what you did the morning of March 4, last

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week?

"MR. SLOTNICK: It was her birthday. There was a party. Her husband got arrested the next day.

"MR. KAPLAN: Your Honor, this is buttressing the direct.

"MR. SLOTNICK: Of course it is, and the Government does it every time they play a tape recording.

"THE COURT: You want to put her on? Go ahead. Ask the three questions but remember, you are dealing with people who are intelligent, in the jury box.

"MR. SLOTNICK: It's plausible to me, Judge.

"THE COURT: May 24, 1972?

"MR. SLOTNICK: Her birthday.

"THE COURT: April, 1973 was my birthday and I don't remember what I did.

"MR. SLOTNICK: You weren't arrested the next day.

"THE COURT: I know -- I come here every day -- I must have been in court.

"MR. KAPLAN: They represented that no substantive witness was supposed to be in this courtroom.

"THE COURT: It's not a substantive witness.

"MR. KAPLAN: It seems to me --

"THE COURT: Mr. Kaplan, sit down. You will be better off. You know my feelings.

"Bring in the jury."

MR. KAPLAN: The testimony, at this point, is cummulative.

MR. SANTANGELO: You don't know what the testimony is going to be.

MR. SLOTNICK: It won't be cummulative.

(Conclusion of side bar discussion)

(Following held in open court)

MR. SLOTNICK: Amanda Acosta.

THE COURT: All right, miss. Stand up.

A M A N D A A C O S T A, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record, please.

THE WITNESS: Amanda Acosta, A-c-o-s-t-a.

DIRECT EXAMINATION

BY MR. SLOTNICK:

Q Mrs. Acosta, where do you live?

A 96th Street and 30th Avenue.

Q Would you tell us where you bought fruit, two

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years ago?

A Between 90th and 31st.

Q Would you describe the fruit store to us.

A That is between --

MR. KAPLAN: Objection to this testimony as cumulative.

MR. SLOTNICK: It's not.

THE COURT: I will let her answer.

A That's between 90th and 31st.

Q What did the fruit store look like?

A A small store.

Q Outside or inside?

A They sell outside and inside.

Q What did they sell?

A Fruit, all kind of fruit.

Q Anything else that you remember?

A No, not that I remember.

Q Who did you buy fruit from?

A It was the guy -- they call him "Chino".

Q When was the last time you saw Chino?

A It was between April and May.

Q How do you remember that?

A Because I always go there. I live there for six years.

Q Tell the jury how you remember the fruit store closing?

A Because I went over there and they close. I asked the people when they pass and they say they close because something happened over there.

MR. KAPLAN: Objection to what people told her.

THE COURT: Sustained.

Q That was the last time you saw Chino?

A Yes.

Q About how long ago?

A In '72.

Q You were a shopper there?

A I always shop fruit over there.

Q Was it a special day you shopped there?

A Only Saturdays.

MR. SLOTNICK: Your witness.

MR. KAPLAN: No questions.

THE COURT: Were there paint cans in the store where you bought the fruit?

THE WITNESS: Yes.

THE COURT: In the fruit store?

THE WITNESS: I see both guys --

THE COURT: No, no.

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Were there paint cans in the store where you bought the fruit?

THE WITNESS: I don't know.

THE COURT: Were there any ladders, the things you climb up on?

THE WITNESS: No.

THE COURT: Do you know what a tarpaulin, a canvas is, that you put on the floor to stop the paint -- did they have that in the fruit store?

THE WITNESS: Always have it in front.

DIRECT EXAMINATION

BY MR. SLOTNICK CONTINUING:

Q Do you recognize anybody at the table other than myself?

A I recognize both of them over there. I see them over there in the front.

Q What were they doing?

A Going back and forth with paint.

MR. SLOTNICK: Thank you.

CROSS EXAMINATION

BY MR. KAPLAN:

Q When is the first time you were asked to come here and testify today?

A The first time?

Q Yes.

A Well, it was yesterday. They talk to me about it yesterday.

Q Where did they see you yesterday or who went to see you yesterday?

A Who went to see me?

Q Yes, who was the person?

A It was them (indicating).

Q Which person was it?

A Him, the one I saw all the time. (indicating)

Q Point him out or tell us his name.

A I saw him all the time back and forth with paint.

Q Do you know his name?

A No, I just see him all the time in front of the store.

Q Did he talk about the case?

A All the time I talk to him in the front of the store when I buy.

Q But did he talk to you -- Mr. Morell, is that who you are pointing to?

A Yes. I speak with him all the time about the store closing.

Q Did you see him on the street?

A Yes.

Q He picked you up on the street?

A I go back and forth.

MR. KAPLAN: Thank you.

RE-DIRECT EXAMINATION

BY MR. SLOTNICK:

Q Do you know their names?

A No, not really about the name. I always talking with them. That's all.

Q That's when you were there on Saturdays?

A Yes.

THE COURT: You were walking along the street and they asked you to come to court today?

THE WITNESS: I always pass to the store.

THE COURT: Did they come to your house?

THE WITNESS: No. I pass by because I live on 30th Avenue.

THE COURT: You can step down. Thank you.

MR. SLOTNICK: Thank you very much.

MR. SANTANGELO: I call Albert Einstein to the stand.

A L B E R T E I N S T E I N, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record, please.

THE WITNESS: Albert Einstein, E-i-n-s-t-e-i-n, attorney, Law Bureau, State Tax Commission, New York City.

THE COURT: It is certainly an illustrious name.

DIRECT EXAMINATION

BY MR. SANTANGELO:

Q By whom are you employed, sir?

A The Department of Taxation and Finance, State Tax Commission, Law Bureau.

Q Earlier this week, did you receive a subpoena?

A My office did.

Q Pursuant to that subpoena, did you cause a search to be made of your department files?

A I did not personally cause that search to be made but my office did.

Q As a result of that search was anything found?

A Yes.

Q Tell me what was found pursuant to that subpoena.

A The subpoena called for records including a certificate of authority referring to premises 90-19 31st Avenue, Elmhurst, Queens, for the period of April and May,

1972, and specifically, the application of Urbano Ramos dated 4/21/72 and other papers relating thereto and the above premises.

Q What were you able to find?

A This morning our office received from Albany, where the search was made, a certified copy of a certificate of registration on file with the Sales Tax Bureau and which was signed by Robert J. Hauke, senior sales tax examiner.

It appears to be a certificate of registration to secure a certificate of authority to collect sales taxes.

Q For what business?

A I will read, if I may, from the certificate.

MR. SANTANGELO: One moment.

I offer that in evidence.

MR. KAPLAN: No objection.

THE CLERK: Certificate of authority marked in evidence as Defendant's exhibit K.

THE WITNESS: It is a certificate of registration.

THE COURT: A certificate of registration for the authority.

THE WITNESS: Right.

(so marked)

MR. SANTANGELO: Since the document is in

evidence and speaks for itself I will ask no further questions.

MR. KAPLAN: May I ask some questions?

MR. SANTANGELO: Sure.

CROSS EXAMINATION

BY MR. KAPLAN:

Q Mr. Einstein, is it?

A Yes.

Q Would you look at the document and from the document, can you tell us if there was an actual fruit store in operation?

A Not from the document.

Q Can you tell us if there was, when it operated, from what date?

A The only information that you can actually gather from this certificate is that an application was made on a certain date by a person and in this application it is stated that -- under, number 5 -- the type of business and it is written in, "fruits, vegetables; retail."

Q That's all you can tell?

A And there appears to be a signature marked "owner" and a date.

Q You haven't verified that signature?

MR. SANTANGELO: Objection.

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THE COURT: It's in evidence.

MR. KAPLAN: No further questions.

CROSS EXAMINATION

BY MR. SLOTNICK:

Q Where it says --

MR. SLOTNICK: Give that to the witness, please.

(Document handed to witness by Government counsel)

Q (continuing) There is a place where it says "owner"?

A On the bottom line.

"I certify the above statements are correct" and the line says, "signature, title, date."

There appears to be a signature.

Q What does the signature look like?

A Urbano Ramos.

Q And the title?

A Under "title" is printed "owner."

Q Is that not raised?

A No.

THE COURT: You wouldn't know if pursuant to such registration, sales tax was collected?

THE WITNESS: I don't know but a certificate

of authority was issued because it has a number.

THE COURT: You wouldn't know if it was paid?

THE WITNESS: Not from this.

CROSS EXAMINATION

BY MR. SLOTNICK CONTINUING:

Q I show you exhibit H for identification and I ask you if that is a prototype of the certificate that would issue --

MR. KAPLAN: Objection.

THE COURT: Sustained.

MR. SLOTNICK: No further questions.

Thank you.

MR. KAPLAN: No questions.

THE WITNESS: Am I excused?

MR. SANTANGELO: Absolutely.

THE COURT: Yes.

THE WITNESS: Thank you.

THE COURT: The people are excusing you. You don't need to thank me.

THE WITNESS: Well, thankyou, your Honor. I always ask the Judge if I am excused.

THE COURT: All right.

Thank you.

MR. SLOTNICK: As I promised the Court, I have one more witness and three questions.

THE COURT: All right.

MR. SLOTNICK: Mrs. Morell.

M A G D A L E N A M O R E L L, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record, please.

THE WITNESS: Magdalena Morell, M-o-r-e-l-l.

DIRECT EXAMINATION

BY MR. SLOTNICK:

Q Mrs. Morell, what is your birthday?

A May 24.

Q Speak a little louder.

A May 24.

Q Do you remember May 24, 1972?

A Yes I do.

Q Would you tell us what you did that evening?

A About 7:30, 8:00, we went to my mother's house to celebrate my birthday.

Q How late did you stay there?

A About 2:30, 3:00.

Q How do you remember the time?

A My brother turned back the clock so we could stay late.

MR. SLOTNICK:

CROSS EXAMINATION

BY MR. KAPLAN:

Q What time did you --was it your mother's house?

A Yes.

Q What time did you get there?

A Around 7:30, 8:00.

Q What time did you leave your premises?

A Well, it takes about half an hour to get to my mother's house. I didn't look at the clock to see exactly what time.

Q And you were there from 7:30 to about three in the morning?

A Correct.

Q Who was present?

A My brother, Victor, his wife Maryl and my younger brother Gabriel, my mother, husband, my two children and myself.

Q Your two children were there too?

A Yes.

Q Till three in the morning?

A Yes.

Q How old are your children?

A Now they are seven and six.

Q So then, they would be four and five?

A Four and five.

Q And you just happened to remember your brother turning back the clock?

A Yes.

MR. SLOTNICK: Objection.

THE COURT: I'll allow it.

Q You love your husband?

A Yes.

Q You don't want to see him convicted?

A I know he is innocent.

MR. KAPLAN: Nothing further.

RE-DIRECT EXAMINATION

BY MR. SLOTNICK:

Q Do you know if your children stayed up that evening?

A We took them upstairs to my sister-in-law's apartment. She has a bed in a separate room. We put them to sleep.

Q How did they get home?

A We carried them. I carried the youngest and my husband carried the older daughter.

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MR. SLOTNICK: No further questions.

MR. KAPLAN: No further questions.

MR. SLOTNICK: The defendant Morell rests.

MR. SANTANGELO: The defendant Brunen rests.

MR. KAPLAN: The Government rests.

THE COURT: All right. Take the jury out.

(Jury excused at 12:20 p.m.)

THE COURT: All right. Make your motions.

MR. SLOTNICK: At this time, the defendant requests, in view of the fact there is a reasonable doubt shown to the Court, a judgment of acquittal.

THE COURT: Denied.

MR. SANTANGELO: Motion so made.

THE COURT: Denied.

Ready for summations?

MR. KAPLAN: I hope we don't start the summations and then have to break for lunch.

THE COURT: We are going right through.

I spoke to my fine court reporter who is always very accomodating, and she said it was all right with her.

MR. KAPLAN: I hope the jury doesn't get hungry.

THE COURT: Oh, no. It won't be that long.

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MR. SLOTNICK: Twenty minutes a piece should do it.

MR. KAPLAN: Twenty minutes for the defendant and a half hour for the Government.

THE COURT: What are you going to talk about, the fruit stand?

MR. KAPLAN: There's not much else, your Honor.

THE COURT: All right. We will take a five minute recess and then we will start the summations.

(Recess taken)

(After recess)

(Jury not present)

THE COURT: I'm going to place on the record at this time that the Court's charge has been exhibited to both the assistant United States Attorney and to the defense attorneys for perusal and any requests or objections they may have, addressed to the charge -- and the Court has noted any objections there may have been -- and the charge is now prepared and will be delivered in the form in which it was demonstrated.

Any further objections?

MR. KAPLAN: No.

MR. SLOTNICK: I except to your Honor's refusal to charge number 1, that though they are jointly indicted does not mean that each defendant must not be considered separately.

THE COURT: That's in there, that each defendant stands separate. That's in there.

MR. KAPLAN: On the other hand, your Honor, once he brings that up I should add that any statement made by co-conspirators in the furtherance of the conspiracy is admissible against the other.

THE COURT: That's in the charge.

The charge is complete in all respects.

MR. SANTANGELO: No objections, your Honor.

THE COURT: The charge will be delivered in the form written.

You will either win or lose on the facts. We will never win on the charge. That's guaranteed.

Bring in the jury.

I will advise the jurors that the time has been allotted and agreed upon and it will be within the Court's discretion as to whether you covered the material sufficiently and I will advise you of the expiration of the time.

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(Jury entered jury box)

THE COURT: Mr. Slotnick?

I have consulted with the three attorneys Mr. Kaplan, Mr. Slotnick and Mr. Santangelo and I have time limits for them to sum up to the jury and I will advise them when the time has expired.

We will go through summations and charge and I won't take too much time but you will miss a bit of your lunch hour. I will send you to lunch on the Government's time. The Government will pay. Are you in agreement with that?

JUROR NUMBER FIVE: Any restaurant?

THE COURT: I'm sure you will enjoy the restaurant. I don't believe in sandwiches. You have the right judge. I don't eat sandwiches myself and I'm sure your hunger pangs will not attack for another hour or two.

(continued on next page)

MR. SLOTNICK: Ladies and gentlemen, I promise to be rather brief. This has been a brief case. You have listened patiently in the last few days and when it is overwith and the charge is done you will go in and deliberate.

There are a couple of things I'm constrained to tell you. I said in my opening that at the end of the case, if you kept an open mind and listened to all the evidence I could come back here and look each of you in your eyes and tell you you had to have a reasonable doubt as to the guilt of my client and you must acquit my client. Well, I do that now. I look in your eyes and tell you that.

You have heard the testimony, listened to the evidence, seen my client testify, heard the Government informant.

I told you this had an Alfred Hitchcock twist to it. Well, ladies and gentlemen, for Pedro Morell this horror show that has lasted for two years, can only be extinguished partially by your acquittal. Never can he erase the horror of having agents stick guns in his head --

MR. KAPLAN: Objection.

MR. SLOTNICK: Testimony, your Honor.

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THE COURT: It is the jury's recollection.

MR. SLOTNICK: Ten agents walking into a store with guns drawn.

Narcotics agents made a mistake in this case and chief supervisor Scharlatt said they went to my client's home, went to his apartment, saw his wife there, searched the apartment and found nothing. That is mistake number two.

I ask you by your judgment of acquittal to let my client go home and erase the mistakes, as much as they can be erased.

It is a simple story.

We have a man by the name of Valdez, who the Government will claim was credible. He tells you he was caught on his one and only cocaine deal. I asked in the opening that you not leave your common sense home. He got caught so that was his only deal.

He decided to work with the Government. It is very questionable. Let's look at why. So, he doesn't go to jail.

I asked him, "Were you afraid of going to jail?" First, he said "No." "Were you concerned about going to jail?" Then, he said, "Yes." Let's look at Mr. Valdez's present situation.

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He pled guilty and in May of 1971, he got three years probation.

In May of 1971 and since we can all add, we can now understand that he is still under the thumb of the Government.

MR. KAPLAN: Objection. There is no testimony to that effect.

MR. SLOTNICK: There is testimony that he plod guilty and got probation.

THE COURT: There is no testimony that he is still on probation.

MR. KAPLAN: He is out of the country.

MR. SLOTNICK: I say, he is still under the thumb of the Government. I say that they can draw that inference.

THE COURT: You cannot.

MR. SLOTNICK: Exception, your Honor.

Valdez has a good situation. He doesn't go to jail. He still can traffic in cocaine and one of the reasons we asked about his standard of living to show where he got his money from.

He got paid for 1972, $2,000.00 from the United States Government, $1,500.00 of which came from this case. He earned $6,000.00 in that year,

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so he says. $2,000.00 he gave to his father to hold. He said he gave cash to his father to hold leaving $4,000.00 to live on. He is paying $180.00 a month rent, driving a car, has a wife and two children; a wife, he suddenly says on re-direct, who earns a hundred dollars a week.

MR. KAPLAN: Objection. That isnot the testimony.

MR. SLOTNICK: May I sum up?

THE COURT: Yes, you may. It's the jury's recollection.

MR. SLOTNICK: He suddenly says his wife earns a hundred dollars a week but nothing about where she works or anything about it.

Let's talk about past history and reasonable doubt.

Put Valdez against my client's past work record, past history -- this Valdez who remembers nothing, who makes no notes, who just testifies as to vast recollection.

In 1972, a year after he was sentenced to three years probation he is pushed. He has got to give a body. He gets $1,500.00 for conjuring up my poor client. He tried to justify it by saying

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he spent months at work on this.

If you believe his testimony as to the times he was at the store -- and there is no question he was at the store -- my client testified they saw him at the store and he was there five or six times and spent five minutes and once he was there for forty minutes -- $1,500.00 for an hour's worth of work -- well, that's pretty good work.

He tells us about fictitious Louie and I contend, from the evidence, you can believe Louie doesn't exist.

He works for the Government and he meets Louie. Louie has no last name or address. He is not noted or reported anyplace and best of all -- you remember when I went through the minutes -- "Didn't I question you last week" -- best of all, last week, he said "I met Louie in a bar or on the street" and this week he says "I met Louie in a television repair store."

Let's look at Louie because I say he doesn't exist. Louie is a very convenient individual -- Louie.

I made my point about his being a Government operator and not taking notes down or anything else

about Louie.

You know the amazing thing? This is put together by an ingenious and yet not an ingenious mind. He testifies to meeting Louie in a bar, in the street or a t.v. repair store -- depending on the date he testified -- and after he meets Louie, lo and behold, he meets Louie on the street with my client. Isn't that miraculous? Louie doesn't call, make any arrangements or even write him a letter. After he meets Louie he bumps into Louie again and there he is, with my client and if a life depends on that type of testimony, I ask you not to take it.

But, there is more, much more. He testified that he got a card.

"Oh, it was white or green."

That's pretty safe for a card.

Where is it? He gave it to the agents. When I asked for its production, the Government could not produce it.

I tell you, he no more got a card from my client or from anybody -- I don't remember who he said he gave him the card -- then Louie exists. Not only that, but in his great wisdom he gives

the wrong information on the card.

There is a defendant's I in evidence. That's a card. The Judge told you to ignore the black writing on the bottom. It has nothing to do with the case and it may have been put there inadvertently by somebody, but this man, Valdez, tells us when confronted by his report, "I'm not good in English. I never learned English in school" but he read an address on the card, 90-19 or 17 and ladies and gentlemen, take exhibit I and look at it and if this has the address of the store on it, I'll eat it. That's another lie.

Valdez is a man of limited English so words have great meaning to him. I asked him does he live in a house and he said, yes, in Central America, he lives in a house. Today, he rents a house or lives in a house. I asked him where was his house when he lived in Queens and he said, "Oh, no. I lived in an apartment." "House" and "apartment" has a meaning to him.

He told you he went to my client's house. That's his testimony. He went to my client's house -- and we'll forget for a moment my client wasn't home. Agent Scharlatt the Government's

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second and only witness testified that my client lived in an apartment. He said he went to his house.

He didn't testify to the house or apartment. He didn't give us a description about it. Don't you think if he was in my client's apartment that he would have told us it had green walls, blue, white or "I sat on a couch" or anything? He skillfully avoided mentioning anything about it.

MR. KAPLAN: Objection.

THE COURT: The jury's recollection.

MR. SLOTNICK: He mentioned nothing about my client's apartment nor did he describe it and he called it a house and that cannot be contended.

Valdez lived in an apartment. He paid $180.00 a month. By the way, he filed tax returns so if we deduct $2,000.00 from the six, that leaves $4,000.00. Did he deduct what he was supposed to pay the Government, leaving about $3,000.00? Tell me how he pays $180.00 a month. My client pays $153.00 a month and he told you where his income comes from. Did he seem a man who is a cocaine trafficer?

The Government objected to my characterization

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of Valdez as a cocaine trafficer but what is a man who testified that he had ten thousand dollars worth of cocaine on his person and he wasn't a user? That's a trafficer and you can find that from the evidence in going into his great income or lack of it, or whatever it is and don't forget that he used to give cash to his father to hold and that's the testimony. He gave cash to his father to hold from his cocaine deals and do you know what else? Then, he changed his mind and when I read through the old report he gave me some excuse but ultimately, he said, after being badgered, "I gave cash to my father to hold." Why? I wanted you to see his standard of living so you would know what Valdez was like.

Does my client appear like a man who is a cocaine trafficer, living in an apartment, paying $153.00 a month for rent with a wife and two children, driving an old car?

It is true my client didn't remember each and every job and was confused as to the two months, but Mr. Bruzon had a good memory and accounted for each and every week.

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The lady we took off the streets didn't know

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their names but she said "Yes, I knew them. They were the painters. I used to see their truck."

The two kids and the man -- remember what Mr. Hetson, president of the Purity Paint Company who came here to testify for my client said? "He is a hard working, industrious man" and he knew about the arrest and their reputation didn't change and Mr. Garmendia and Mr. Lima, the certified public accountant, friend, business associates and the people who took the stand today that we didn't know -- there is no question that these men are hard working industrious people.

There are more lies which I will get to.

THE COURT: Five minutes.

MR. SLOTNICK: Okay.

There is an Urbano Ramos, a Chino, a vegetable man.

Valdez led us to a store front and told us about a vegetable stand which looked a little strange. It wasn't doing any vegetable business. It was closed. People came in to ask my client for vegetables. Was there a vegetable stand? Did the State of New York come up with the certificate from the air and you can ask for this. It is in evidence.

It indicates the owner of that vegetable store. Ask for it.

Where was my client May 24? How fortunate Pete Morell is that his wife was born May 24 and he got home late, that Eddy, the brother, turned the clock back. But it's made to look sinister. Why do things have to look sinister? "Where did your children sleep? Where were your children?" Fortunately, sleeping upstairs.

You can't take the word of a cocaine trafficer, feed bad words to a case agent who never testified. Why didn't the Government put Eugene McElroy on the witness stand? You guess why.

They didn't trust Valdez. They searched him before he went into the store.

Scharlatt -- "We searched the car for contraband." Couldn't McElroy corroborate the record?

"He gave me a card." I didn't get a card from the Government.

Why did the only man in contact with Valdez, why didn't this agent take the witness stand?

Please, don't do anything rash but consider the "whys" and code word for basement -- because

Valdez, before he went there, knew where the cocaine was -- "God damn, God damn." He wanted the agents to go right to it.

I'll be finished in a moment, in a moment, your Honor.

The whole transaction was a phony. Look at the photographs.

Four agents ran to my client's apartment, frightened his wife, searched the house, the apartment and found nothing. Four men dressed as hippies, walked into the Morell apartment and found nothing because there was nothing there.

My client is not a cocaine dealer and he has been proven not to be a cocaine dealer.

It's not my burden of proof. I could sit here and do nothing but twiddle my thumbs but we put on the case to save his soul.

A constant laborer, a hard working, industrious man. Is that a cocaine dealer?

Even Scharlatt's testimony had a question. The other agents said he stopped directly outside the door. Scharlatt said he walked to the trunk. Valdez put him ten feet away because Valdez knew he had a job to do. If you're going to sell or

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deliver cocaine, why hang a hammock, ladies and gentlemen, and where the hammock was, Scharlatt said all the stuff was underneath the hammock, hidden and there is one proven fact in this case, there is no question my client wasn't down there that day. That's a proven fact in this case. You must acquit him.

The statement -- I guess Mr. Santangelo will touch on that -- it's in evidence. He was dictated to. He doesn't understand English. He reads cards. It's a mistake.

He says at one o'clock -- when they were at the wife's birthday -- he says he was at my client's place. He puts my client in the basement when it is an established fact he wasn't there and he says at the end, no promises or rewards were made to him. Is there any question that he got paid $1,500.00 cash? No promise of reward. What's that money? Why was it put in here -- to fool the jury? I leave it up to you.

Not only did my client say he is innocent and take the witness stand but he said it ten times which is worth more than a Valdez.

You can't help but have a reasonable doubt.

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This is the first time in American juris prudence that you are asked for a conviction on the word of a proven cocaine trafficer --

MR. KAPLAN: Objection.

MR. SLOTNICK: There is no question about it.

THE COURT: Time is up.

MR. SLOTNICK: You must listen to the Judge carefully, take what he says into the jury room with you and let my client go home to his wife and family. He has had enough.

Thank you, and I'm sorry.

THE COURT: Mr. Santangelo.

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MR. SANTANGELO: Ladies and gentlemen of the jury, Valdez started off with ten thousand in his kick. He was a parking lot attendant. He paid ten thousand dollars for that cocaine in Miami and yet he wants you to believe that it was his first and only deal.

Where did he get the ten thousand dollars? What was he doing with a kilo of cocaine? Ask these questions. Sit and remember what he said and the other witnesses and ask questions and remember when you ask those questions, who has the burden to go forward with the evidence?

There are three prongs to the deal Valdez described. First, the initial meeting with Ramon and Pedro when he says he got a card. What happened to the card? Was it produced? No. Where was Agent McElroy to take the stand to say "Yes, he gave me a card." That's the beginning of the deal. Has the Government satisfied its burden with regard to the beginning of the deal?

The second part, the telephone call. He called or there was a call and Ramon said "I have the paint." It's important, is it not, as to who called who? On the witness stand what did he say?

"Ramon called me." In his statement of June 15, "I waited until approximately 6:30 p.m. at which time I called Ramon Bruzon."

Remember the little boy who comes to his mother and tells the story and then two weeks later he is questioned about the story and he tells a little bit of a lie? How can you tell it is a lie? Because the facts change.

All Valdez knows on that stand is that he is out to convict two men. He is out to convince you that two men were guilty of possessing cocaine but he cannot keep in his mind the little facts, the lies that he made up. If it's truth, it's truth and it doesn't change and an important thing is who called who, whether he called Ramon or Ramon called him. That doesn't change. That was the only phone call in the case. There was only one phone call.

Let's get to the day of the arrest. That's important too. What did he say when he walked in and took the stand?

"Who is on the ground floor?

"Pedro."

He asked Pedro where Ramon was. "Downstairs" and he went downstairs alone and in the statement he

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said, "When I got inside I talked with Morell and Bruzon about the cocaine I would buy that day and about future purchases of cocaine." Digging a little deeper. "Morell and Bruzon then took me into the basement." Were they both up there? Do you remember that? When did he remember that only Pedro was upstairs? He forgot about this statement, the little details that show whether something is true or false and he became the little boy who lied.

Now, we asked you to wait and we were confident that we could show you that Valdez should not be believed, that Valdez is not a witness that should make you convict two hard, honest working men with families -- to convict them of a hideous, heinous crime that they are charged with.

This is the picture of the downstairs. My client told you what he was doing down there -- cleaning his paint brushes and Mrs. Acosta said he was there every day, going in and out. He had a right to be there. Nothing wrong with that and somebody else was in that basement too -- Valdez.

I asked him what did he do down there. "Walking around the front. I said, 'Hello.' I clean my paints."

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There are the boxes. The boxes that show up in the Government's evidence two. The same boxes. Ramon's boxes. Urbano Ramos' boxes.

I ask you. The Government said, "You mean you couldn't see that cocaine spread out on the floor?" Look at the picture. Scharlatt said it was a basement, very untidy, unkempt, a lot of things, garbage pails, wood, tires, suitcases. That's right. He didn't see the cocaine because Valdez didn't want him to see it. It wasn't set up yet and I ask you another question: When Valdez came into the store, did he give the money to anybody? Did he make a move to give the money to anybody? No money passed to my client or Pedro Morell.

Then, I made him tell you about the mixing and he mixed and he mixed and he mixed and he mixed some more. For forty minutes he mixed. My client mixed. Valdez wants you to believe that he mixed and Agent Scharlatt testified there was powder on the floor and he saw the little traces of powder on the table from that chair, thirty feet away and in his report, what was on my client's clothes? Paint.

They went to search Pedro Morell's house. Don't let them tell you they weren't concerned about more evidence. They didn't stop at the store. They went to the house. I asked him, "Why didn't you take the clothes if there was cocaine all over them?" You saw the cocaine dropped on the table.

Now, the Government may say this is a red herring. This is not the smell of fresh red herring. This is the smell of rotten fish. In this case, there is the smell of rotten fish.

The Government's case consisted of two witnesses, Valdez and Scharlatt.

Scharlatt said he saw the cocaine. Fine. But you have to believe Valdez and you've got to go into that jury room and you've got to say you don't believe Ramon Bruzon and you saw him on the stand. You saw his hands. You saw how he testified.

What cross examination was there of my client? The Government tried to make him say he didn't run and he said he did run and he said he ran because he was scared to death. Long-haired men, not dressed in suits and ties, who didn't testify, came to the basement with guns drawn and he ran and when somebody said, "Stop, police" he stopped. Is that reasonable?

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What did you want him to do?

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There may be other arguments made. All right. Valdez maybe, he lied a little bit. Maybe he wasn't so clear. Maybe he didn't do this or that but I ask you , if you believe that man lied that much, can you be so sure that the entire stew is not tainted?

If you find one piece of meat rotten, in the stew, can you be so sure that the entire stew isn't rotten? Can you be so sure, without a reasonable doubt, that you will put that man where he will go if you convict? Can you look in his eyes, look at his wife and on Valdez's testimony, on the non-testimony of McElroy, can you put these two men away?

What is their life worth since 1964 when they came here from Cuba and worked in a restaurant and as painters and raised a family? What is that life worth if it is not to put it on the stand before you people and say "Give me my life. It's been good for ten years. Don't believe what that man said about me." Can he do anything else? We did all we could do. We brought everyone we could bring -- the kids around the block, the old man, a shopper in the fruit store -- what more could

we do? The defendants took the stand.

But, did the Government do everything it could do? Take the clothes from my client's back. See if there was cocaine. Did you see the bottles that were supposedly used to mix into the cocaine? Where were the bottles?

You are going to go and deliberate and you will come back and your Foreman will give you a verdict and I'd like you to imagine that my client is cloaked and has a hood on his face so you can't see his face and you don't know who he is and the Foreman will read the verdict and I say to you, if that verdict is fair and that verdict is honest, it will make no difference to you that when the Foreman reads the verdict you find out that under the cloak, is your father, your brother -- anyone in your family. If you can do that, if you can think of it that way, if you can accept that testimony against the testimony of that man and the non-testimony of that man -- you do it.

Thank you.

THE COURT: All right.

Mr. Kaplan?

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MR. KAPLAN: May it please the Court, just arranging my papers, your Honor.

Do you have the picture?

MR. SANTANGELO: Yes.

(Photograph handed to counsel)

MR. KAPLAN: Ladies and gentlemen, the first thing we have to do before we think about the facts of this case is to wipe out of our eyes, all of the sand that has been thrown. That's what's been happening here today and yesterday.

When I say "sand" there are lots of words that can be used; smoke screens; Mr. Santangelo used the word "red herring." Ladies and gentlemen, that's what this case is all about. I shouldn't say "that's what the case is about" but that's what the defense in this case is all about.

Let's stop, pause and dispense with rhetoric and talk about the facts in the case; Valdez, Brunson, Morell and the fruit store, the great smoke screen.

We know that Valdez was convicted of a crime. We know that in 1969 he possessed cocaine. He testified that he started to cooperate with the Government sometime thereafter. We know that at the time this case occurred in 1972, Valdez was under

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no compulsion to cooperate with the Government --

MR. SLOTNICK: We don't know that. The evidence points both ways. As your Honor indicated, he got three years probation in May of 1971.

THE COURT: There was no testimony either way.

MR. KAPLAN: He testified there were no threats or promises and he was already sentenced, no pending cases. There were no arrests.

Think about it yourselves. How is the Government going to infiltrate the narcotic traffic but by paid informants or people like Mr. Valdes? Do you expect Mr. Scharlatt and Mr. McElroy to go into the Cuban communities?

MR. SLOTNICK: I object to any mention of this business.

THE COURT: All right.

MR. SLOTNICK: Unfair comment.

THE COURT: No.

MR. KAPLAN: The fact of the matter is, how will they infiltrate the drug traffic --

MR. SLOTNICK: Objection.

THE COURT: You may say it.

MR. KAPLAN: (continuing) Except for people

like Mr. Valdez.

Mr. Valdez got paid. No dispute. We brought that out on direct and I told you in the opening he got paid. But he was getting paid for his expertise. He was a man who knew about cocaine, no doubt about that. He could talk about cocaine, was of Cuban decent, he could speak to people of Cuban background.

MR. SLOTNICK: Objection to that. It is a generalization and it is presumptious.

MR. KAPLAN: Mr. Valdez was Cuban himself.

THE COURT: He can say it.

MR. KAPLAN: Mr. Valdez was getting paid for the danger he was subjecting himself to, dealing in narcotics in an undercover capacity. If someone finds out you are an agent this subjects you to the greatest possible danger as you can imagine these agents subject themselves to.

MR. SLOTNICK: Objection.

THE COURT: Sustained.

MR. KAPLAN: So, Mr. Valdez was getting paid, and rightfully so.

Mr. Valdez met a man by the name of Louie. That is unimportant. It's a smoke screen. Louie

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has nothing to do with the case. He introduced Morell and Bruzon to Valdez and think to yourselves, in a neighborhood such as this, Spanish-speaking people and most of the people being Cuban --

MR. SLOTNICK: Objection. There is no proof as to that.

THE COURT: Sustained. There is no proof as to that.

MR. KAPLAN: Think to yourselves, if it would be unusual if there would be such an introduction to be made, especially if we know, as Mr. Valdez testified that Louie is a person with whom he had a conversation regarding people he might know in cocaine and Mr. Valdez at this time is seeking out people in cocaine traffic.

So, when he has the opportunity to meet Morell and Bruzon it's not unusual to have a conversation on the street, especially in April, a generally warm weather month.

MR. SLOTNICK: Objection, your Honor. We have classified May as being a warm month.

THE COURT: Go ahead.

MR. KAPLAN: The initial meeting took place in late April.

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Remember the business card that was received from Morell and Bruzon? We have a business card here. It has the home address or associate address of Bruzon and Morell, not the address of the paint store. But, we don't know when this card was printed. Morell and Bruzon, after May 25, were no longer associated with that paint store.

MR. SANTANGELO: Objection. No such testimony.

THE COURT: It's the jury's recollection.

MR. KAPLAN: It was closed down and became a pizzaria. Is it unusual to draw up a new card, especially since, as you heard from Valdez, the card was white or green? This could have been printed two weeks ago, six months ago, a year ago. This card means nothing.

There is a meeting on the street corner and an exchange about cocaine. Price? Price wasn't discussed at that time but when they could meet, the next occasion.

Valdez got the address and proceeded on four or five occasions, as you heard, to the paint store and talked with Morell and Bruzon.

They want to know -- the defense is raising

the question why Agent McElroy didn't testify. McElroy didn't speak to Morell and Bruzon but Valdez testified that he was in contact from the initial meeting in April, April 25 or late April meeting and on each individual occasion he was in contact with McElroy and the fact of the matter is, ladies and gentlemen, if it was Urbano Ramos, as the defense would have you believe in this case -- and we'll talk about him later -- wouldn't the agents be a little shocked when they are expecting to find Urbano Ramos in the premises May 25, to find Morell and Bruzon, people they never heard of? It's quite obvious they were expecting and found the men Valdez told them about.

MR. SLOTNICK: That's a conclusion.

THE COURT: Yes. The statement may not be accurate and it is the jury's recollection as to the facts.

MR. KAPLAN: The defense had an equal opportunity to call Mr. McElroy.

MR. SLOTNICK: Objection. Your Honor instructed the jury we need do nothing.

THE COURT: I will instruct the jury through my charge as to duties and obligations.

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All right.

MR. KAPLAN: Now, let's talk about Valdez on the stand.

He comes up here in 1974, two years after the incident and he testifies of his own free will and accord.

He testified, as he told you, there are no cases pending. He is not getting paid for his testimony. There are no cases hanging over him. Nobody is holding his family in jail here or anything like that.

MR. SLOTNICK: Objection.

MR. KAPLAN: There is no reason for this man to fly up to New York from Central America. Have they shown you a reason or motive for this man to lie? We'll talk about the defendants' motives a little later on.

Why should he come up here and make a trip like that? There are no promises or threats hanging over his head.

The fact of the matter is, they pointed out various inconsistencies in his testimony and the statement he made June 15, 1972 to McElroy but wouldn't you think, if Valdez was lying, he would

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conform his testimony to the statement rather than deviate from the statement?

You heard Valdez on the stand. A lot of times he didn't catch my questions or Mr. Slotnick's questions. He wasn't responsive; a communication barrier.

Agent McElroy doesn't speak Spanish. We equate the statement. It's quite obvious --

MR. SANTANGELO: Objection.

MR. SLOTNICK: Objection.

THE COURT: It's not quite obvious.

MR. KAPLAN: You can draw the same inference from the conversation McElroy and Valdez had on June 15th, as to how Valdez testified here. Some of the questions were not responsive because he didn't understand.

Again, if he was lying, wouldn't he conform his story on the stand to the 1972 statement? He had the statement. He could have just testified from the statement.

Again, remember there were no promises, payments, nothing. No pending cases. There was nothing for that man to lie about. There were no inducements. You have to consider that. They

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are calling the man a liar. Why? He is coming up from Central America. It's not even in our jurisdiction --

MR. SLOTNICK: Objection to that. There are extradition proceedings.

THE COURT: No, no. It's not our country -- period.

Disregard the statement made by counsel.

MR. KAPLAN: You have got to ask yourselves "What else can the defense present in this case when the evidence is so overwhelming?" The defendants have their hands in the cookie jar with cookie crumbs on their faces and we'll talk about the diversion.

One of the diversions they tried to create was why didn't they vacuum the clothes of Morell and Bruzon and Scharlatt testified he was found there alone in the basement with cocaine. Now, you want us to take off his clothes? If this was a bank robbery case and the defendant walked in with a gun and pointed to the tellers with the gun --

MR. SLOTNICK: This isn't a bank robbery case.

THE COURT: Improper.

MR. KAPLAN: An analogy.

THE COURT: No.

MR. KAPLAN: If they took the clothes they would have said "How come no fingerprints" and if they took the clothes and this is always the case --

MR. SLOTNICK: There is no testimony whether they did or did not take fingerprints. Let the jury wonder about that.

THE COURT: Disregard that and I'll instruct you on how to weigh the testimony.

MR. KAPLAN: There was question about how much Valdez made. He testified he had a job at the parking lot, at the Bureau of Narcotics. He was getting paid. He did odd jobs; carpentry jobs and his wife was making a hundred dollars a week.

If he lived in a hundred thousand dollar house and he drove four new Cadillacs, then you might question it but the man, from all appearances, was and is as hard working as the defendants would have us believe they are. That's another smoke screen.

THE COURT: You have about five minutes.

MR. KAPLAN: Your Honor said thirty minutes for the Government.

THE COURT: I said I would use my discretion.

MR. KAPLAN: Let's talk about Urbano Ramos.

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What's happening in the basement? We concede Ramos had a fruit store there on May something, 1972 and the two young boys testified on May 25, 1972 there was a fruit store and the testimony of the agents and Bruzon himself said the fruit store was gone a week before and they were making chocolate candies on a table or something as ridiculous as that. Ramos was nowhere near the premises four or five o'clock, May 25, 1972. This is to divert your attention.

We are traveling a highway here and we are going through the bends and curves and these two attorneys --

MR. SLOTNICK: Objection to any reference to me.

THE COURT: Yes.

MR. KAPLAN: Testimony about the fruit store and everything about Urbano Ramos is to take you off a little dirt road and a maze of curves and turns so you are so far away from the highway you'll never get back because they know what is at the end of the highway once you make the logical inference -- guilty.

Why were all the narcotics lying on the floor

in plain view of these two men of great integrity, according to the character testimony? Why would Ramos, if he was a dope dealer, have two witnesses to his cocaine dealings?

MR. SLOTNICK: There is no such testimony.

MR. KAPLAN: Why was Valdez waiting around in the store? That doesn't make sense either.

The fact of the matter is, that when he went downstairs he came downstairs with Mr. Morell, despite what Mr. Slotnick would have you believe.

MR. SLOTNICK: Objection. This is the second time he has done this and I ask your Honor to instruct the jury that it is unfair comment.

THE COURT: Well, it's not, really.

MR. KAPLAN: Maybe it was Ramos' cocaine but you have the testimony of Mr. Valdez that a man who, again I indicate to you, has no reason to take the stand and lie while the defendants, on the other hand, take the stand with the full knowledge of the consequences and have everything to gain by making up a story --

MR. SLOTNICK: Objection --

MR. KAPLAN: (continuing) By fabricating --

MR. SLOTNICK: Objection, your Honor.

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THE COURT: I note your objection.

Go ahead.

MR. KAPLAN: What was going on in the paint store? It was a paint store, dirty paint store. On May 25, what was going on there?

There were three people in the store, Morell, Bruzon and Valdez and again, maybe your recollection is better than mine or Mr. Santangelo's, but I recall Bruzon testifying that he was taking the garbage out, conveniently, in the alleyway, taking out the garbage and he never ran and Agent Scharlatt observed him running. Why run? Why run unless it is a consciousness of guilt.

Do you think, if this fellow, by the name of Urbano Ramos was the dope dealer he would leave $48,000.00 worth of cocaine in the basement on the floor, knowing that these two men had occupancy of the premises as well? Where was Urbano Ramos? He had nothing to do with this case. There was a Ramos dealing fruit there. He is no longer around. The defense would have you believe it must have been him but you have Valdez, Morell and Bruzon and they are the only people in this case.

They put on character testimony. I ask you,

who couldn't get someone to testify --

MR. SLOTNICK: Objection.

THE COURT: Sustained. Stay away from that. It's bad.

MR. KAPLAN: It's another diversion to draw you away from the simple, obvious and inevitable conclusion of this case.

Mr. Slotnick, in his opening, talked about a dramatic ending, an Alfred Hitchcock finale. Well, ladies and gentlemen, they did give us a little Alfred Hitchcock on the defense. The comparison between the defense and Alfred Hitchcock is there -- both purely fictional.

The fact of the matter is, as I stated before, these men, Morell and Bruzon, had their hand in the cookie jar, crumbs dripping down their faces.

What would be your reaction if you wanted to pin something on someone, if a young kid has his hand in the cookie jar --

MR. SLOTNICK: Objection.

THE COURT: Stay away from these comments.

MR. SLOTNICK: The comments are outlandish.

THE COURT: I didn't say that at all.

MR. SLOTNICK: I'm saying that.

MR. KAPLAN: In conclusion, ladies and gentlemen, I am going to make this appeal to your reason and common sense and not the rhetoric which you heard preceding me.

If you look at the facts and circumstances in this case of what happened, not what was speculated or what happened in the fruit store, a couple of days before, a fruit store closing down or some person they tried to interject to confuse, you'll find that the evidence shrieks, "guilty."

Thank you.

THE COURT: All right. We will take a five minute recess.

(Jury excused)

THE COURT: Motions?

MR. SLOTNICK: I respectfully move the Court, once again, for a judgment of acquittal as to the defendant Pedro Morell.

THE COURT: Denied.

MR. SLOTNICK: And I ask for the withdrawal of a juror and the declaration of a mistrial as a result of the unfair comments in Government's summation.

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THE COURT: Denied.

MR. SANTANGELO: On behalf of the defendant Ramon Bruzon, I make the same motion.

THE COURT: Motion denied.

Bring in the jury.

(Jury entered jury box)

(continued on next page)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury:

We now come to the final steps of the proceedings. The Court will now charge you on the law to be applied to the facts in the case.

As you may recall, I initially gave you a pre-charge as to the manner in which the case would be presented to you. I told you that most of the evidence in the case would come in the form of the testimony of witnesses, and that you were to pay special attention to the manner in which the witnesses testified.

I believe I also instructed you that you would be the judges of the facts in the case, that being your sole province; and that your recollection of the facts after having heard all of the evidence in the case -- the testimony of witnesses and the documentary proof -- was to control the determination of the issues.

Likewise at that time I told you that I would be the judge of the law. This has not changed at this stage of the proceedings. I will not review the facts in this case for you because I am certain that with summations by the attorneys there is no need for the Court to review the facts. In any event,

if you find that there is some fact in the case that you may have forgotten or don't recollect, or you can't agree with each other in your deliberations, you can have it read back from the record, and that will, I am sure, refresh your memory.

In any event, I am the judge of the law. You must accept what I say to be the law in this case.

Now, the attorneys have been permitted by the Court and by the rules to make opening statements and summations to you. Under no circumstances are the statements they have made by way of opening or by way of summation to be taken as evidence. However, the Court and the law does permit you to take the arguments that they have proffered before you and weigh those arguments. And if you agree with what they have said on either side of the case you may use those arguments in your deliberations and in discussing the case with each other, and try to convince one another as to what the final determination shall be with reference to the deliberations at hand.

If you feel that the arguments are not commensurate with the testimony and the proof in the case, you may disregard them. The arguments are not evidence. You need not weigh them. However, there are times

when the arguments of the attorneys will give you an insight as to something you may have missed, and you may discuss that portion of it if you so desire.

Now, of course, I also said to you that during the trial the Court will be the judge of the law. Likewise, as to motions which at times we had at a side bar, as you may recall. That was not for the purpose of keeping any of the proof from you, but were matters of law that were discussed between the attorneys and the Court itself and should not have come before you. In any event, if you feel that you have discovered by some stretch of your imagination what this Court thinks as to either some of the testimony or the case itself, you should remove that from your mind because I tell you here and now I have come to no conclusion in this case nor have I indicated to you in any way whatsoever what my feeling is with reference to the facts in the case or with reference to the guilt or innocence of the defendants. That is your province and your job. You should not try to weigh what you believe the Court's impression may be.

You must understand that the lawyers who appear before you are advocates. They are advocating the best case they can for the people they represent

and they have a right to exercise as much forcefulness as they desire in their questioning or otherwise in presenting their case. I say this because this is within the framework of the ordinary trial.

Of course you know by this time that this case has come before you by way of an indictment presented by a Grand Jury sitting in this Eastern District. That indictment charges the defendants with the counts I shall now read to you. Remember, the indictment is merely an accusation, merely a piece of paper. It is not evidence and is not proof of anything.

"Count One: On or about the 25th day of May 1972, within the Eastern District of New York, the defendant Pedro Morell and the defendant Ramon Bruzon, wilfully and knowingly did combine, conspire confederate and agree together with each other to distribute a quantity of cocaine hydrochloride, a Schedule II narcotic drug controlled substance in violation of Section 841(a)(1), Title 21, United States Code. (Title 21, United States Code, Section 846)."

The pertinent part of 21 U.S.C. Section 846 reads as follows:

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"Any person who conspires to violate any Federal narcotics statute is guilty of a crime."

Count Two reads as follows:

"On or about the 25th day of May 1972, within the Eastern District of New York, the defendant Pedro Morell and the defendant Ramon Bruzon, did possess, with intent to distribute approximately 3,867 grams net weight of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2)."

The pertinent part of 21 U.S.C. Section 841 (a)(1) reads as follows:

"It shall be unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance."

Cocaine hydrochloride is a controlled substance.

Count Two also charges the defendants with violating Section 2 of Title 18 United States Code which reads as follows:

"(a) Whoever commits an offense against the United States or aides, abets, counsels, commands, induces or procures its commission, is punishable as

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a principal.

(b) Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

A conspiracy is a combination of two or more persons, by concerted action, to accomplish some unlawful purpose, or to accomplish some lawful purpose by unlawful means. So, a conspiracy is a kind of "partnership in criminal purposes", in which each member becomes the agent of every other member. The gist of the offense, is a combination or agreement to disobey, or to disregard, the law.

Mere similarity of conduct among various persons, and the fact they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

However, the evidence in the case need not show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose

was to be accomplished. What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand, a person who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Before the jury may find that a defendant, or any other person, has become a member of a conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the defendant, or other person who is claimed to have been a member, wilfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

To act or participate wilfully means to act or participate voluntarily and intentionally, and with specific intent to do something the law forbids,

or with specific intent to fail to do something the law requires to be done; that is to say, to act or participate with the bad purpose either to disobey or to disregard the law. So, if a defendant, or any other person, with understanding of the unlawful character of a plan, knowingly encourages, advises or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a wilful participant -- a conspirator.

One who wilfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determing whether a conspiracy existed, the jury should consider the actions and declarations of all of the alleged participants. However, in determining whether a particular defendant was a member of the conspiracy, the jury should consider only his acts and statements. He cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, beyond a reasonable doubt, and that he was one of its members.

Three essential elements are required to be proved in order to establish the offense of conspiracy

charged in the indictment:

First, that the conspiracy described in the indictment was wilfully formed, and was existing at or about the time alleged;

Second, that the accused wilfully became a member of the conspiracy; and third, that an overt act was knowingly done in furtherance of some object or purpose of the conspiracy as charged.

If the jury should find beyond a reasonable doubt from the evidence in the case that existence of the conspiracy charged in the indictment has been proved, and that during the existence of the conspiracy an overt act was knowingly done by one of the conspirators in furtherance of some object or purpose of the conspiracy, then proof of the conspiracy offense charged is complete; and it is complete as to every person found by the jury to have been wilfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the overt act.

As stated before, the burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged; the law never imposes upon a defendant in a criminal case the burden

or duty of calling any witnesses or producing any evidence.

The essential elements of the second count of the indictment, all of which the Government must prove beyond a reasonable doubt for you to convict the defendants on this count, are as follows:

First, that the defendants possessed approximately 3,867 grams of cocaine hydrochloride;

Second, that the defendants possessed the cocaine with intent to distribute it;

Third, that they understood that the substance they possessed was cocaine or some other illegal drug; and Fourth, that they understood that they were acting illegally.

If the Government fails to prove any one or more of these essential elements beyond a reasonable doubt, you must acquit the defendants.

The law recognizes two kinds of possession; actual and constructive possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention, at a given time, to exercise dominion or control over a

thing, either directly or through another person or persons, is then in constructive possession of it.

You may find that the element of possession as that term is used in these instructions is present if you find beyond a reasonable doubt that the defendants had actual or constructive possession, either alone or jointly with others.

You may find that the goods mentioned in the indictment were in the defendants' possession if you find that the defendants knowingly had them in their power or under their control.

The term "distribute" means to deliver. The term "deliver" means the actual, constructive, or attempted transfer of a controlled substance.

Now, in order to aid and abet another to commit a crime it is necessary that an accused wilfully associate himself in some way with the criminal venture, and wilfully participate in it as he would in something he wishes to bring about; that is to say, that he wilfully seeks by some act or omission of his to make the criminal venture succeed.

An act or omission is "wilfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the

specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

You, of course, may not find a defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant participated in its omission.

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

Now, there are in any case, and in this one, two types of evidence from which a jury may properly find a defendant guilty of a crime, one is direct evidence such as testimony of an eyewitness, the other is circumstantial evidence which is proof of a chain of facts and circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but

simply requires that before convicting a defendant the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

A defendant is presumed innocent of the crime. Thus the defendant, although accused, begins the trial with a clean slate and with no evidence against him, and the law permits nothing but legal evidence to be presented before a jury to be considered in support of any charge against the accused, so that the presumption of innocence alone is sufficient to acquit a defendant unless you, the jury, are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt, and reasonable doubt is doubt based upon reason and common sense, the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

You, the jury, will remember that a defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt exists whenever, after careful and impartial consideration of all the evidence in the case, the jurors do not feel convinced to a moral certainty that a defendant is guilty of the charge. So, if the jury views the evidence in the case as reasonably permitting either of two conclusions, one of innocence, the other of guilty, you, the jury, should, of course, adopt the conclusion of innocence.

I have said that the defendant may be proven guilty either by direct or circumstantial evidence. I have said that direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. Also circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant. You, the jury,

may make common sense inferences from the proven facts.

It is not necessary that all inferences drawn from the facts in evidence be consistent only with guilt and inconsistent with every reasonable hypothesis of innocence or that there must be no reasonable doubt as to each chain of proof. The test is one of reasonable doubt, and should be based upon all the evidence, the testimony of the witnesses, the documents offered into evidence and the reasonable inferences which can be drawn from the proven facts.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from the facts which have been proved. You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw, from the facts which you find have been proved, such reasonable inferences as seem justified in the light of your own experience.

As I stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The crimes charged in this case are serious crimes which require proof of specific intent before

a defendant can be convicted. Specific intent, as the term implies, means much more than the general intent to commit the act. To establish specific intent, the Government must prove that a defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

Intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer the defendant's intent from the surrounding circumstances. You may consider any statement made and act done by a defendant, and all other facts and circumstances in evidence which indicate his state of mind. It is ordinarily reasonable to infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves, and it goes without saying that you should scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show

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whether a witness is worthy of belief. Consider each witness's intelligence, motive and state of mind, and his demeanor and manner while on the stand. Consider the witness's ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves. Another test that you can use in determing the truthfulness or credibility of a witness is to use your own good common sense in addition to these essentials that I have given you. You can use your good common sense as you do in your everyday experience where you must make important decisions based upon what others tell you. When you decide to either accept or ignore the statements of others you use your common sense. Your good judgment will say to you somehow or other that whatever they say does not appear to be truthful, that somehow or other you just do not believe what they have said. That is your ability to reason, your ability to determine the truthfulness of the person you are speaking with. Likewise, your common sense should be used to determine the weight to be given the testimony of a witness.

You take that some good common sense into the jury room, you do not leave it outside. In addition to what I have said, use your common sense as a test in exercising your good judgment and in determining whether or not this defendant is guilty

gentlemen of the jury, have you agreed upon a verdict?

JUROR NUMBER ONE: We have.

THE CLERK: How do you find the defendant Pedro Morell, guilty or not guilty as to count one?

JUROR NUMBER ONE: Guilty.

THE CLERK: How do you find the defendant Pedro Morell, guilty or not guilty as to count two?

JUROR NUMBER ONE: Guilty.

THE CLERK: How do you find the defendant Ramon Bruzon on count one, guilty or not guilty?

JUROR NUMBER ONE: Would you say that --

THE COURT: How do you find the defendant Ramon Bruzon, on count one, guilty or not guilty?

JUROR NUMBER ONE: Guilty.

THE CLERK: How do you find the defendant Ramon Bruzon, on count two, guilty or not guilty?

JUROR NUMBER ONE: Guilty.

THE CLERK: Ladies and gentlemen of the jury, as the Court has received your verdict, you say you find the defendant, Pedro Morell and the defendant, Ramon Bruzon, guilty on counts one and two and so say you all.

MR. SLOTNICK: I would ask you to poll

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the jury.

THE COURT: Poll the jury.

THE CLERK: Juror number one, is that your verdict as to the defendants Pedro Morell and Ramon Bruzon?

JUROR NUMBER ONE: Yes.

THE CLERK: Juror number two, is that your verdict as to the defendants Pedro Morell and Ramon Bruzon?

JUROR NUMBER TWO: Yes.

THE CLERK: Juror number three, is that your verdict as to the defendants Pedro Morell and Ramon Bruzon?

JUROR NUMBER THREE: Yes.

THE CLERK: Juror number four, is that your verdict as to the defendants Pedro Morell and Ramon Bruzon?

JUROR NUMBER FOUR: Yes.

THE CLERK: Juror number five, is that your verdict as to the defendants Pedro Morell and Ramon Bruzon?

JUROR NUMBER FIVE: Yes.

THE CLERK: Juror number six, is that your verdict as to the defendants Pedro Morell and

Ramon Bruzon?

JUROR NUMBER SIX: Yes.

THE CLERK: Juror number seven, is that your verdict as to the defendants Pedro Morell and Ramon Bruzon?

JUROR NUMBER SEVEN: Yes.

THE CLERK: Juror number eight, is that your verdict as to the defendants Pedro Morell and Ramon Bruzon?

JUROR NUMBER EIGHT: Yes.

THE CLERK: Juror number nine, is that your verdict as to the defendants Pedro Morell and Ramon Bruzon?

JUROR NUMBER NINE: Yes.

THE CLERK: Juror number ten, is that your verdict as to the defendants Pedro Morell and Ramon Bruzon?

JUROR NUMBER TEN: Yes.

THE CLERK: Juror number eleven, is that your verdict as to the defendants Pedro Morell and Ramon Bruzon?

JUROR NUMBER ELEVEN: Yes.

THE CLERK: Juror number twelve, is that your verdict as to the defendants Pedro Morell and

Ramon Bruzon?

JUROR NUMBER TWELVE: Yes.

THE CLERK: Jury polled, your Honor.

THE COURT: The jury has been polled and found to be unanimous as to both counts against both defendants.

I wish to thank you for the time you have spent on the case and your understanding for the times we have had recesses, as well as your willingness to stay a little later when it was necessary. It is only because of you that we can press these things on and I know you have reached a verdict which is proper and just.

Thank you.

THE CLERK: Report Tuesday morning at nine thirty.

THE COURT: The jury is discharged.

(Jury discharged at 5:45 p.m.)

THE COURT: I reserve all motions to the day of sentence.

Any bail applications at this time?

MR. KAPLAN: I believe the defendants are presently on $25,000.00 bail and I would ask for an increase in their bail based upon the lack of

citizenship.

THE COURT: Have they been on bail since 1972 and appeared here each and every time?

MR. SLOTNICK: Yes.

THE COURT: The Court will continue the bail.

You promise the Court you will be back for the day of sentence?

DEFENDANT MORELL: Yes.

THE COURT: Mr. Bruzon?

DEFENDANT BRUZON: Yes.

THE COURT: This is adjourned without date for sentence.

You will be notified of the day of sentence through your lawyers.

MR. KAPLAN: May we have the addresses on the record?

THE COURT: Yes.

DEFENDANT MORELL: 144-64 Sanford Avenue, Flushing, New York.

DEFENDANT BRUZON: 97-26 Corona Avenue in Queens.

THE COURT: All right.

Good night.

MR. KAPLAN: The probation department, has indicated through Mr. Sullivan that the probation department would like to talk to the defendants.

THE COURT: Come in tomorrow morning to see the probation department.

Good night, now.

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-against- :

PEDRO MORELL :
RAMON BRUZON, :

Defendants. :

----------x

72 CR 644

United States Courthouse
Brooklyn, New York

May 10, 1974
10:00 a.m.

B e f o r e :

HONORABLE MARK A. COSTANTINO, U.S.D.J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

Appearances:

EDWARD J. BOYD, V, ESQ.
United States Attorney
for the Eastern District of New York

BY: KENNETH KAPLAN, ESQ.
Assistant United States Attorney

G. L. SANTANGELO, ESQ.
Attorney for Defendants

THE CLERK: Criminal cause for sentence, United States of America against Pedro Morell and Ramon Bruzon.

THE COURT: Before that, we have a motion for a new trial.

MR. SLOTNICK: I apologize to the Court for being late. It is my understanding that Mr. Kaplan wishes to argue orally rather than submit affidavits.

MR.KAPLAN: That is correct.

THE COURT: All right.

MR. KAPLAN: May I be heard?

THE COURT: Yes.

MR. KAPLAN: As your Honor recalls, during the course of the trial we had testimony from a paid informant Valdez and he was a paid informant, he was in effect a Government agent. He saw a crime being committed in his presence. He was a party to the crime and in fact he was as if an agent himself. He was an invitee to the premises and your Honor recalls this was not a private house, it was a storefront. The probable cause was provided by Valdez' information and the fact he is a reliable informant. This of course was not disputed, that the agents had probable cause to make an arrest. Once they made an arrest of Morell upstairs they went downstairs for the purpose

of arresting Bruzon, which they had an absolute right to do. They see Bruzon running outside, fleeing, as it were, and captured him, and as Shalott is turning around there in plain view as in the two prongs of Cooledge against New Hampshire, 403 U.S. 443 mandates that the agent be lawfully on the premises, which they were, and that they see an item in plain view inadvertantly, which they did -- they weren't looking for it.

Now, Mr. Slotnick gives us the case of I believe United States against Cooks, which is a Seventh Circuit case. It is submitted that the case of Cooks is clearly applicable to the instant situation. In Crooks there was a sweep of the premises, they were looking for narcotics and they in fact testified it was in plain view and they had to go into the kitchen to find it. This was not an inadvertant finding where the agents are making an arrest. The narcotics is right there on the floor. In this case we also have exigent circumstances, they didn't know what was going on in the basement down there, whether Bruzon was going to destroy it or they didn't know if there was a third party in this case. We have four kilos of cocaine.

I honestly don't see how Cook is in any affecting the instant case and your Honor's initial ruling

especially in light of the United States Supreme Court Cooledge against New Hampshire, this is a classic Cooledge situation. The reason I didn't submit papers is there is not an awful lot to say about the Cooks case. It is clearly distinguishable.

MR. SLOTNICK: I was speaking to a judge yesterday who told me that anybody can cite Cooledge against New Hampshire for anything because I think there are about five principals, none of which are majority opinions, standing for 40 different principals. With all due deference to the Supreme Court, I won't cite Cooledge against New Hampshire but what I will say is the following: We had a great history of urging police officers and agents to obtain search warrants and not to circumvent that. Justice Goldberg wrote in Ventresca against United States and he said we are to cause law enforcement to go to independent neutral magistrates so that they can make a determination and not the officer who is out fighting the crime.

Now, what has occurred in this case is what we call a circumvention of the warrant proposition. Taking what Mr. Kaplan said at face value to be true that there is a reliable confidential informant that the police officer believed, and that there was some observation they had made although we look at Spinelli

and we would say no, there was no meat but there was no observation of police officers. But taking all that Mr. Kaplan says as true, why don't they when they meet the informant early in the morning go before a judge and say, look, your Honor, we are going to this and this premises, going for the purpose of this and that, it was a storefront but it was a sealed closed store that had an apartment in it, that store was private, it was locked, it wasn't open and available to the public. Your Honor remembers the trial. One thing I don't have any problem with is your Honor's memory. I looked at Cooks and I see Cooks reiterates all the cases that indicate search warrants are necessary when there is reasonable cause to believe something is about to happen in the future.

What we did is was they have an investigation, I recollect the trial record it lasted three weeks, they heard three or four weeks earlier, and they allegedly knew about these individuals and had a prior meeting set up -- why couldn't they have gone before a judge? What Cooks says is -- it is a Seventh Circuit case but it cites Supreme Court cases -- says the following, if I may just take a little quote out of it. It cites Agnello against the United States, that's A-g-n-e-l-l-o, it's an old case: Belief however well

founded that an article sought is concealed in a dwelling house furnishes no justification for a search of that place without a warrant and such searches are held unlawful. Notwithstanding the fact unquestionably showing probable cause.

Now, Cooks goes over and says the following -- which is really what Cooks stands for to a great extent: If the authenticity of the buy and bust is assumed -- if the authenticity of the buy and bust is assumed, then they go down later on in the paragraph, 15 Criminal Law 2063: Incontrovertible testimony of the censors and incriminating object is on the premises belonging to a criminal suspect may establish the fullest possible measure of probable cause but even if the object is contraband this Court has repeatedly stated and even enforced the basic rule that the police may not enter and make a warrantless search.

And they go down to the next paragraph: The requirement of a warrant imposes no inconvenience whatever or at least none which was constitutionally cognizable in a legal seizure. That regards warrantless search, per se, unreasonable --

THE COURT: The testimony here is the informant himself was one of the transactors going out to the car and they were downstairs in plain view of the

items underneath --

MR. SLOTNICK: The testimony is --

THE COURT: And the fleeing of the defendant. It is a little bit different. This is --

MR. SLOTNICK: The Cooks case discusses plain view.

THE COURT: The circumstances here were what we used to call quite obvious and notorious and under the circumstances it didn't seem to me on the suppression hearing that you had to run down to the Magistrate and say everybody just stay status quo until we get back with the warrant.

MR. SLOTNICK: If that was my argument it would be frivolous.

THE COURT: You are saying Cook is a little different?

MR. SLOTNICK: Yes.

THE COURT: From the Seventh Circuit?

MR. SLOTNICK: Yes, before they walked into the store --

THE COURT: Once again, you presume everybody is going to stay in their positions like they were a bunch of mannikins -- no, it may have been a poor exercise of discretion of judgment but it doesn't make it improper.

MR. SLOTNICK: I say it flies in the face of --

THE COURT: It doesn't make it illegal. They didn't make it illegal by not doing it your way.

MR. SLOTNICK: That is the exception that I have.

THE COURT: I understand. I just want you to know I will place the reason for the denial on the record, the Court having tried the case and remembers all the evidence in the case and the circumstances of the case, I feel that it was sufficiently proper that they made the arrest in the manner they did, and also seeing the items in the manner in which they said.

All right, sentence.

MR. KAPLAN: I would like another Assistant to stand in for me. Judge Weinstein wants me on the Sixth Floor.

THE COURT: You have a good man standing in for you.

MR. LEVIN-EPSTEIN: Thank you, your Honor.

MR. SANTANGELO: I would like to advise the Court at this time that my client Mr. Bruzon is not in the courtroom. He was spoken to this morning by the co-defendant Mr. Morell. He went out on a job. His wife had spoken to him at approximately 10:30 or a quarter to 11. I haven't spoken to him today. I expected him to be here. Your Honor knows that he has

a home that he owns and that he has a family. He has appeared each time this case has been called. He appeared for sentence on Monday whom he expected to be sentenced. I don't have any reason to believe that he fleed the jurisdiction. He was working this morning.

THE COURT: I want to sentence both these defendants at the same time.

MR. LEVIN-EPSTEIN: Your Honor, we have no reason to believe he has not left the jurisdiction.

THE COURT: Neither do I.

MR. LEVIN-EPSTEIN: Which defendant is here?

MR. SANTANGELO: Mr. Morell is here.

MR.LEVIN-EPSTEIN: If the Court desires to sentence both at the same time we will request a remand of the one and--

THE COURT: No, I will sentence him today.

MR. LEVIN-EPSTEIN: In that case we ask for a bench warrant on Bruzon.

THE COURT: Yes.

MR. SANTANGELO: Would you stay the execution of the bench warrant?

THE COURT: Bench warrant issued and stayed until Monday morning. If he doesn't appear he will be picked up.

I am going to issue a bench warrant and I won't stay it.

MR. SANTANGELO: Your Honor, can you stay it until 5 o'clock this afternoon? He may walk in at any moment.

MR. LEVIN-EPSTEIN: Then the Government would join in a motion to vacate the bench warrant.

THE COURT: The bench warrant will issue.

Now, I will listen.

MR. SLOTNICK: On behalf of Pedro Morell, may I be heard prior to sentencing?

THE COURT: Yes.

MR. SLOTNICK: On May 8, 1964, Pete Morell entered the United States by walking out of a boat. As your Honor knows he fled the Communist tyranny in Cuba. He was to witness and he knew about his family being plundered and his assets taken by a gentleman by the name of Fidel Castro. He left Cuba and came here. From the day that he came here -- I shouldn't say that, perhaps from the first month, he worked and worked very hard. He entered the United States in Key West, Florida on a boat with several other people -- they landed in the Bahamas. He spent four months working in Miami Beach and spent another ten months working after he left the Deauxville Hotel Home for the

Aged. In 1965 he came to New York. He met a young lady and they got married. He has been married ever since. They have children, as your Honor well knows. His record, and I look through it very hard with regard to employment has no open spots. He came to New York in May of 1965 and began working for a furniture company for a year. Then he worked for another company and then in 1970 he worked for Inter-City Painting. He learned his trade and he learned it well. He and Ramon, the co-defendant, became partners in the painting business. As your Honor knows, and the testimony was very clear, they worked very hard and people came in and testified -- and I am not talking about character witnesses, I am talking about the people who came in off the streets who testified that they used to see them -- they used to see these men come in in the early morning in their painting clothes and come back at four o'clock. There is no question they worked very hard.

After this incident occurred we are involved with today. Mr. Morell and Mr. Bruzon dissolved their partnership. And today Mr. Morell is in partnership with his brother who is also an excellent painter from what I hear. The Morell Painting Company is possessed of large contracts. They got a couple here which may

have indications as to one, their business acumen, and two, their ability. They have got a 31-story building at 58th Street and Second Avenue. They've got the Hunt Club, 280 one-family homes in Long Island.

I am not going to read these to your Honor (indicating), you've seen them. And they have a substantial business. They are hard-working people. The jury found them guilty of a dumb circumstance. I would like not to go into that. I have to reflect about it. I know at sentencing one should seem contrite and tell the Judge they won't do it any more. I would rather not discuss the jury verdict, but I would like to say this to your Honor, there is behind Pete Morell a wife, home, family and brother and no place else to go. Not that he gets a plus because he is a Cuban refugee, but he's got no place to go. He is a man who came here who spoke some English and maintained himself in the community as your Honor will remember the testimony, he plays ball every Sunday and you know we are now into the baseball season. Your Honor remembers that a president of a paint company testified as to what he saw and knew of Mr. Morell, knowing of the charges. The accountant came and other people came.

I have been innundated by letters which I have

not given to your Honor. Your Honor will realize that any letter I get will not say anything bad about the defendant. All I can say is I ask your Honor to consider the years of hard work and hard labor and the plus points for Pete Morell, his wife, family, business aspirations, business acumen, to forget what the jury considered to be criminal and if it is so it would be what I consider to be harsh stupidity.

Mr. Morell came from a different climate and different environment. I ask your Honor to be as lenient and as kind as possible.

THE COURT: Do you have anything to say?

THE DEFENDANT MORELL: I wouldn't know what to say, your Honor.

THE COURT: Well, the Court is ready to pass sentence. I must say that the Court does not relish or take pleasure in this duty and obligation. Even with the eloquence of the statement made by your attorney the Court feels that the crime for which you have been convicted is one that is very serious in this country. The jury has found you guilty and it is my duty to sentence you.

You are hereby sentenced to eight years under 4208(a)(2) and five years special parole.

You are advised that you have a right to appeal

from the conviction and if you do not have sufficient funds to pay for the appeal you may apply to appeal as a poor person known under the law as enforma pauperis.

MR. SLOTNICK: At this point, it is not necessary.

THE COURT: You are advised that you may take an appeal. If you cannot afford it --

MR. SLOTNICK: Your Honor, if the situation changes I will come back to the Court.

Your Honor, with regard to the defendant's bail conditions, as your Honor is well aware, this is an old case, the indictment number is 72-CR and the defendant has always appeared, and I respectfully request that he be allowed the same bail conditions pending appeal.

THE COURT: What is his bail?

MR. SLOTNICK: $25,000.

THE COURT: Is there cash?

MR. LEVIN-EPSTEIN: It is a surety bond.

THE COURT: He has put up --

MR. LEVIN-EPSTEIN: May I be heard on that? After speaking with the Assistant that tried this case and investigated this case, Mr. Kaplan, I request on behalf of the Government that the defendant Morell

STATE OF NEW YORK)
: SS:
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 11 day of Nov, 1974 deponent served the within Appendix upon M & L attorneys

attorney(s) for Appellee

in this action, at 225 Cadman Plaza East Brooklyn N.Y.

the address designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

ROBERT BAILEY

Sworn to before me, this
11 day of Nov 1974

William Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43 0132945
Qualified in Richmond County
Commission Expires March 30, 1976